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IN THE SUPREME COURT

OF THE STATE OF IDAHO

Supreme Court Docket No. 40793-2013

STEVEN CUMMINGS

Plaintiff/Appellant/ Cross Resp

VS.

LAW CLERK

ROGER L. STEPHENS, et al

Defendant/Respondent/Cross-

DAVID C. NYE District Judge
Appealed from the District Court of the SIXTH

Judicial District of the State of Idaho, in and for BEAR LAKE County.

Nathan M. Olsen,

Attorney for Plaintiff/Appellant/Cross-Respondent

Brad Bearnson,

Attorney for Defendant/Respondent/Cross-Appellant

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Supreme Court Court of Appeals.
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OBSTRICT COURT SIXTH JUSTICIAL DISTRICT BEAR LAKE COUNTY, BASIC

2012 JUL 12 AM 10: 37

KERRY MADDOCK, CLERK

DEPUTY _____CASE NO.

Brad H. Bearnson (I.S.B. 7086)
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Attorneys for Defendant Northern Title

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BEAR LAKE

STEVEN CUMMINGS, an individual residing in Montana,) Case No. CV-2009-183
Plaintiff,	
VS.	
ROGER L. STEPHENS, an individual residing in Providence, Utah, NORTHERN TITLE COMPANY OF IDAHO, INC., an Idaho Corporation, JOHN DOES I-X.))) DEFENDANT NORTHERN TITLE'S) OBJECTION AND RESPONSE TO) PLAINTIFF'S MOTION FOR LEAVE) TO AMEND THE COMPLAINT
Defendants.	
ROGER L. STEPHENS, an individual,)))
Third Party Plaintiff, vs.	
DOROTHY JULIAN, an individual residing in Eagle, Idaho, EVAN SKINNER, an individual residing in Montpelier, Idaho, RYAN OLSEN, an individual residing in Georgetown, Idaho, EXIT REALTY OF BEAR LAKE, LLC an Idaho Limited Liability Company, JOHN DOES 1-X.)))))))))))))
Third Party Defendants.)

DEFENDANT NORTHERN TITLE'S OBJECTION AND RESPONSE TO PLAINTIFF'S MOTION FOR LEAVE TO AMEND THE COMPLAINT Case No. CV-09-183 Page 1

COMES NOW Defendant NORTHERN TITLE COMPANY OF IDAHO, INC., (hereinafter "Defendant"), through counsel of Bearnson & Caldwell, LLC, and hereby provides this Objection and Response to Plaintiff's Motion for Leave to Amend the Complaint.

T. PLAINTIFF'S REQUEST TO NOW AMEND ITS PLEADINGS IS ENTIRELY UNTIMELY AND THEREBY UNFAIR.

Under Rules 16 and 26 of the Idaho Rules of Civil Procedure, the calendar of a case is within the sound discretion of the Court. See I.R.C.P. 16(b) and 26(d); see also Seiniger Law Office, P.A. v. North Pacific Ins. Co., 145 Idaho 241, 249-250, 178 P.3d 606, 615 (Idaho 2008) (denial to add a prayer for punitive damages affirmed as sound discretion of the trial court).

Per the Order Setting Jury Trial, "motions to add new parties or amend pleadings shall be filed no later than 60 days after the date of this Order." Order Setting Jury Trial at ¶ 3, attached hereto as Exhibit "A." Plaintiff's motion to amend his Complaint is over one hundred and fifty (150) days after the Court's Order Setting Jury Trial, and Plaintiff's motion will not be decided until two (2) weeks from trial. See Order Setting Jury Trial at ¶ 1 (setting Trial for July 31, 2012).

While Rule 15 states that amendment of the pleadings should occur where justice requires, the very principle of justice strongly suggests Plaintiff's motion should be denied. Being over three (3) months from the given deadline, where the motion will not be ruled on until two weeks prior to trial, Plaintiff's attempt to amend is unfairly late. Plaintiff also vaguely relies on pleadings long in his possession as grounds for punitive damages. Under these circumstances, Plaintiff's motion is neither fair nor just, and should be denied.

DEFENDANT NORTHERN TITLE'S OBJECTION AND RESPONSE TO PLAINTIFF'S MOTION FOR LEAVE TO AMEND THE COMPLAINT Case No. CV-09-183

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II. THE COURT SHOULD DENY PLAINTIFF'S MOTION WHERE PLAINTIFF HAS FAILED TO PROVE THAT PUNITIVE DAMAGES EXIST BY A PREPONDERANCE OF THE EVIDENCE.

As Plaintiff mentions in his own brief, punitive damages at trial must be proven by *clear* and convincing evidence, and punitive damages may not be amended into the pleadings absent proof by a *preponderance of the evidence*. See I.C.A. 6-1604(2).

Punitive damages are the rare exception, not the rule. Specifically, "[p]unitive damages are not favored in the law and should be awarded in only the most unusual and compelling circumstances." See *Seiniger Law Office*, 145 Idaho at 250, 178 P.3d at 615 (citing *Manning v. Twin Falls Clinic & Hosp.*, 122 Idaho 47, 52, 830 P.2d 1185, 1190 (1992)).

Specifically, two elements must be proven. First, Plaintiff must prove that a bad act was "an extreme deviation from reasonable standards of conduct . . . performed by the defendant with an understanding of or disregard for its likely consequences." *Id.* Second, Plaintiff must prove a bad state of mind, wherein the "mental state required to support an award of punitive damages is an extremely harmful state of mind, whether that be termed malice, oppression, fraud or gross negligence; malice, oppression, wontonness; or simply deliberate and willful." *Id.* Plaintiff is far from meeting this burden.

Plaintiff argues that punitive damages are warranted (1) where allegedly written instructions from Cummings to Northern Title were not obtained prior to recording the Corrected Warranty Deed, and (2) where allegedly Northern Title improperly denied Plaintiff's claims and has defended itself alongside Defendant Stephens, rather than indemnify Plaintiff.¹

¹ Plaintiff also makes several personal and bald accusations against attorney Brad Bearnson and Northern Title of allegedly delaying and frustrating these proceedings or misrepresenting facts to the Court. See *Pl's. Mem. Supp.*

Plaintiff's argument is largely placed on the testimony of Lenore Katri, whose exclusion from trial is pending before this Court. Ms. Katri opined that failure to get written instructions from all parties prior to recording a corrected warranty deed would be an extreme deviation. She also opined that it would not be appropriate to "take one side of the issue" should a claim arise between the parties. See *Pl's. Mem. Supp. Amend Compl.* at 7 (citing *Katr Depo*, 161:20-25, 162:1-20). Katri's opinions, and Plaintiff's assertions based thereon, are factually and legally insufficient.

First, no evidence exists that Northern Title acted with a malicious, reckless, extremely harmful state of mind. At worst, the facts show confusion followed by a good faith attempt to conform the agreement to the parties' understanding. By the time Plaintiff became involved in late July of 2007, the property was under contract to Three Bar Ranches, Inc., and two title commitments by Northern Title had been issued to Three Bar Ranches, Inc. Each title commitment was made expressly and solely to Three Bar Ranches, Inc., and erroneously contained different and incorrect legal descriptions. See Lori Thornock Aff'd. ¶¶ 7-9, attached hereto as Exhibit "B." Within days, Plaintiff purchased the Real Estate Purchase and Sales Agreement from Three Bar Ranches, Inc., but at least two versions of the Real Estate Purchase and Sale Agreement were circulating between Cummings and the Realtors. See Skinner to Cummings REPC and Julian to Cummings REPC, both attached hereto as Exhibit "C." Amidst this flux of changing buyers, Northern Title worked solely with the realtors, and was consistently informed by the realtors that the sale included only that property west of Highway 30. See Lori Thornock 2d

Amend Compl. at 5-7. Even if Plaintiff's accusations were true, these arguments are not pertinent to Plaintiff's burden in proving by a preponderance of the evidence the appropriateness of punitive damages.

2 Exhibits have been excluded.

DEFENDANT NORTHERN TITLE'S OBJECTION AND RESPONSE TO PLAINTIFF'S MOTION FOR LEAVE TO AMEND THE COMPLAINT Case No. CV-09-183 Page 4 Aff'd. ¶7, attached hereto as Exhibit "D." Northern Title's understanding has been corroborated by both of the realtors' testimony, Evan Skinner and Dorothy Julian. See Evan Skinner Aff'd. ¶¶8, 13, attached hereto as Exhibit "E"³; see also Dorothy Julian Aff'd. ¶¶9, 12, 13, attached hereto as Exhibit "F."⁴ Further, the escrow contract expressly allowed Northern Title to follow instructions received by the realtors. See Escrow General Provisions at ¶2, attached hereto as Exhibit "G." Therefore, when Lori Thornock recorded the corrected warranty deed, she believed she was doing just that — making a good faith scrivener's correction:

In the course of the transaction, Northern Title's contact was limited to the realtors, Dorothy Julian and Evan Skinner . . . Both Ms. Julian and Mr. Skinner indicated that Mr. Stephens intended only to sell property west of Highway 30. This was my understanding from the very beginning. The reason for re-recording the existing warranty deed was not to change the transaction between Mr. Stephens and Mr. Cummings, but to conform the warranty deed to what I always understood to be the intent of the Real Estate Purchase Contract.

Lori Thornock Aff'd. ¶¶ 7-8.

Far from Plaintiff's conclusory accusations, the facts show Northern Title acted with a good, helpful state of mind – not an extremely harmful, egregious or reckless one.

Second, Northern Title has not acted in bad faith in defending against Plaintiff's claims. Katri opines that as an escrow and insurer, merely taking one side of the issue is inappropriate. But that is not the law. Per the Supreme Court of Idaho, a claim for bad faith will not lie unless (1) an insurer intentionally and unreasonably denies or withholds payment, (2) the claim was not fairly debatable, (3) denial or failure to pay was not the result of a good faith mistake, and (4) the resulting harm is not fully compensable by contract damages. *Robinson v. State Farm Mut. Auto.*

³ Exhibits excluded.

⁴ Exhibits excluded.

Ins. Co., 137 Idaho 173, 45 P.3d 829 (2002); McGilvray v. Farmers New World Life Ins. Co., 136

Idaho 39, 28 P.3d 380 (2001); Anderson v. Farmers Insurance Co. of Idaho, 130 Idaho 755, 947

P.2d 1003 (1997). Therefore, an insurer does not act in bad faith when it merely challenges the

validity of a fairly debatable claim or when a delay results from honest mistakes. See White v.

Unigard Mut. Ins. Co., 112 Idaho 94, 96, 730 P.2d 1014 (Idaho 1986). Thus far, a "bad faith" tort

against an escrow for defending itself has not been recognized in Idaho.

Northern Title recorded the corrected warranty deed pursuant to its past and present

understanding of the transaction. That Northern Title now in good faith defends itself against

Plaintiff's claims is not bad faith.

III. FOR THE COURT'S CONVENIENCE, SOME OF PLAINTIFF'S MISPLACED

ASSERTIONS WILL BE ADDRESSED.

Starting on page two of his memorandum, Plaintiff lists fourteen bases (listed in numbered

paragraphs one through fourteen) for punitive damages. Most have been addressed above, but a

few deserve special attention. They have been numbered to correspond with Plaintiff's

memorandum:

1) Northern Title recorded the Original Warranty deed in good faith compliance with

the Escrow General Provisions. Under the Escrow General Provisions, Plaintiff acknowledges he

had "been given an opportunity to review all documents at closing and to seek independent advice

or counsel concerning those documents, if desired." Escrow General Provisions, § 3. The closing

documents were provided by Northern Title to Plaintiff's courtesy exchange company. Northern

Title subsequently obtained those closing documents directly by subpoena, and a copy of the legal

description provided at closing is attached hereto as Exhibit "H." The legal description matches

DEFENDANT NORTHERN TITLE'S OBJECTION AND RESPONSE TO PLAINTIFF'S MOTION FOR LEAVE TO AMEND THE COMPLAINT

Case No. CV-09-183

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the Original Warranty Deed recorded on August 3, 2007. See *Original Warranty Deed*, attached hereto as Exhibit "I." Therefore, Plaintiff's assertion is false.

- 3) To suggest an insurer or escrow agent cannot "take sides" <u>after</u> becoming aware of what it believes is a fraudulent claim is tantamount to suggesting Northern Title may not in good faith deny a claim. Plaintiff's claims are more than fairly debatable given the above explained evidence. As explained above, neither Idaho nor any contract between the parties prevent Northern Title from defending itself in this action.
- 5) The delay in issuing the insurance policy was a direct result of Plaintiff's instructions to Northern Title, in attempting to first place the property in trust. See *Internal Correspondence Documents*, attached hereto as Exhibit "J." Plaintiff also misconstrues the internal "log notes" to his own advantage. The log notes themselves were written by Northern Title's *escrow officer*, Lori Thornock, in documenting her correspondence with "Monique," Northern Title's title officer. See *Log Notes*, attached hereto as Exhibit "K." The substance of that correspondence referenced to in Exhibit "K," namely that Cummings' insurance policy should be placed in his individual name and not into a trust, and that such should be issued according to the Corrected Warranty Deed, is noted in Exhibit "J" herein. Therefore, Plaintiff's assertion is entirely misstated.
- Plaintiff's assertion that Northern Title acted deceitfully merely by the fact that Evan Skinner and Lori Thornock are related by marriage is grasping at straws.
- 12) Plaintiff baldly alleges spoliation of evidence, without even reading the deposition transcript submitted to support such. Lori Thornock did admit to deleting emails, but she

DEFENDANT NORTHERN TITLE'S OBJECTION AND RESPONSE TO PLAINTIFF'S MOTION FOR LEAVE TO AMEND THE COMPLAINT Case No. CV-09-183 Page 7 specifically testified that as a matter of systematical course she deletes emails every six (6) months — and that those kinds of emails were not even ordinarily placed into the file. See Nathan Olsen Aff d., Ex. 3 (citing *Thornock Depo.* 134:4-5, 135:9-10). The Idaho Supreme Court has pointed out, "[a]ssuming arguendo that . . . spoliation of evidence is part of the law of Idaho," such a claim only exists where the spoliation is done with an intentional intent to destroy or conceal evidence of a claim. *Toakum v. Hartford Fire Ins. Co.*, 129 Idaho 171, 178, 923 P.2d 416, 423 (Idaho 1996). The systematic deletion of emails that are not part of an official file is a far cry from spoliation.

CONCLUSION

On all counts, Plaintiff's motion should be denied. The motion is grossly untimely, and even still relies heavily on facts and evidence that have long been in Plaintiff's possession.

Notwithstanding, the specific affidavits, contracts and documents of the record prove the inappropriateness of punitive damages.

DATED this day of July, 2012.

BEARNSON & CALDWELL, LLC

Brad H. Bearnson

Aaron K. Bergman

Attorneys for Defendant Northern Title

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the _______ day of July, 2012, I served a true and correct copy of the above and foregoing **DEFENDANT NORTHERN TITLE'S OBJECTION AND RESPONSE TO PLAINTIFF'S MOTION FOR LEAVE TO AMEND THE COMPLAINT** to the following person(s) as follows:

Nathan M. Olsen
Petersen Moss Hall & Olsen
485 "E" Street
Idaho Falls, Idaho 83402

Randall C. Budge
Jason E. Flaig
RACINE, OLSON, NYE, BUDGE &
BAILEY, CHARTERED
P.O. Box 1391; 201 E. Center Street
Pocatello Idaho 83204-1391

Phillip J. Collaer
Anderson Julian & Hull, LLP
250 S. 5 th Street, Ste. 700
PO Box 7426
Boise, Idaho 83707-7426

	X] U. S. Mail/Postage Prepaid
] Hand Delivery
] Overnight Mail
Ĺ] Facsimile (208-524-3391)
Ī	X] Email (Nathan@pmholaw.com

[X] U.S. Mail/Postage Prepaid
] Hand Delivery
] Overnight Mail
] Facsimile (435-752-6301)
	X] Email rcb@racinelaw.net
		jef@racinelaw.net

[X] U. S. Mail/Postage Prepaid
[] Hand Delivery
[] Overnight Mail
[] Facsimile (208-344-5510)
	X] Email (pcollaer@ajhlaw.com)

DEFENDANT NORTHERN TITLE'S OBJECTION AND RESPONSE TO PLAINTIFF'S MOTION FOR LEAVE TO AMEND THE COMPLAINT Case No. CV-09-183
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EXHIBIT "A"

Det NT Obj

DISTRICT COURT
SIXTH JUDICIAL COURT
BEAR LAKE COUNTY IDAHO
Jan 27, 2012 9:33 am
DATE TIME

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE

CLERK

STATE OF IDAHO, IN AND FOR THE COUNTY OF BEAR LAKE

CASE NO.

Register # CV-2009-0000183	
STEVEN CUMMINGS,) Plaintiff,)	ORDER SETTING JURY TRIAL
-vs-)	ORDER BETTERO JORT TRIAL
ROGER L STEPHENS,) NORTHERN TITLE COMPANY OF IDAHO, INC,) JOHN DOES I - X,) Defendants.)	
NORTHERN TITLE COMPANY OF IDAHO, INC,) Third Party Plaintiff,	
-vs-	en en en Salagoria en
DOROTHY S JULIAN, EVAN E SKINNER, RYAN L. OLSEN, EXIT REALTY OF BEAR LAKE, JOHN DOES 1-X	

Third Party Defendants.

(1) TRIAL DATE. This matter is set for JURY TRIAL on the 31st day of July, 2012, AT THE HOUR OF 9:00 A.M., in the Bear Lake County Courthouse, Paris, Idaho. All deadlines listed below shall apply to the trial setting listed above. The parties should plan to try the case on that date. A continuance of the trial date shall occur only upon written Motion or Stipulated Motion

Case No. CV-2009-0000183 ORDER SETTING JURY TRIAL Page 1

Def NT Obj

to the Court which clearly states the reasons for the requested continuance and which certifies that the request or stipulation has been discussed with and agreed to by the party(ies). An Order continuing the trial date to the backup trial date will not alter the deadlines set forth in this Order, except for good cause shown.

- (2) <u>PRE-TRIAL CONFERENCE</u>. No pre-trial conference will be held unless requested by any party in writing at least 30 days prior to trial and ordered by the Court. Pursuant to I.R.C.P. 16(e), in lieu of a pre-trial conference, trial counsel for the parties (or the parties if they are self-represented) are ORDERED to meet and/or confer for the purpose of preparing a joint Pre-Trial Stipulation, which shall be submitted to the Court at least 21 days prior to Trial, and shall include:
 - (A) A statement that all exhibits to be offered at trial have been provided to all other parties and attaching an Exhibit List of all exhibits to be offered at trial by both parties. The Exhibit List shall indicate: 1) by whom the exhibit is being offered, 2) a brief description of the exhibit, 3) whether the parties have stipulated to its admission, and if not, 4) the legal grounds for any objection. If any exhibit includes a summary of other documents, such as medical expense records, to be offered pursuant to I.R.E. 1006, the summary shall be attached to the Stipulation.
 - (B) A statement whether depositions or any discovery responses will be offered in lieu of live testimony, and a list of what will actually be offered, the manner in which such evidence will be presented, and the legal grounds for any objection to any such offer.
 - (C) A list of the names and addresses of all witnesses which each party intends to call to testify at trial, including anticipated rebuttal or impeachment witnesses. Expert witnesses shall be identified as such. The Stipulation should also identify whether any witness' testimony will be objected to in its entirety and the legal grounds therefore.
 - (D) A brief non-argumentative summary of the factual nature of the case. The purpose of the summary is to provide an overview of the case for the jury and is to be included in pre-proof instructions to the jury, unless found inappropriate by the Court.
 - (E) A statement that counsel have, in good faith, discussed settlement unsuccessfully and/or completed mediation unsuccessfully, if mediation was ordered by the Court.
 - (F) A statement that all pre-trial discovery procedures under I.R.C.P. 26 to 37 have been complied with and all discovery responses supplemented as required by the rules to reflect facts known to the date of the Stipulation.
 - (G) A statement of all issues of fact and law which remain to be litigated, listing which

Case No. CV-2009-0000183

ORDER SETTING JURY TRIAL

Page 2

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party has the burden of proof as to each issue.

- (H) A list of any stipulated admissions of fact, which will avoid unnecessary proof.
- (I) A list of any orders requested by the parties which will expedite the trial.
- (J) A statement as to whether counsel require more than 30 minutes per party for voir dire or opening statement and, if so, an explanation of the reason more time is needed.
- (3) <u>MOTIONS TO ADD NEW PARTIES OR AMEND PLEADINGS</u> shall be filed no later than 60 days after the date of this Order.
- (4) <u>DISCOVERY</u> must be served and <u>completely responded to</u> at least 60 days prior to trial. This includes supplementation of discovery responses required by I.R.C.P. 26(e), unless good cause is shown for late supplementation. Discovery requests must be responded to in a timely way as required by the I.R.C.P. The deadlines contained in this Order <u>cannot</u> be used as a basis or reason for failing to timely respond to or supplement properly served discovery, including requests for disclosure of witnesses and/or trial exhibits. Discovery disputes will not be heard by the Court without the written certification required by I.R.C.P. 37(a)(2).
- (5) <u>WITNESS DISCLOSURE</u>. Except as previously disclosed in responses to discovery requests, Plaintiff shall disclose all fact and expert witnesses no later than 140 days before trial. Defendants shall disclose their fact and expert witnesses no later than 105 days before trial. Rebuttal witnesses shall be disclosed no later than 70 days before trial. Expert witnesses shall be disclosed in the manner and with the specificity required by I.R.C.P. 26(b)(4)(A)(i). Witnesses not disclosed in responses to discovery and/or as required herein will be excluded at trial, unless allowed by the Court in the interest of justice.
- (6) <u>MOTIONS</u>. DISPOSITIVE MOTIONS, and responses thereto, shall comply <u>in all</u> respects with I.R.C.P. 56 and be filed no later than 90 days before trial. ALL OTHER MOTIONS, including any Motion in Limine, shall be filed and heard by the Court no later than 30 days before trial. <u>One</u> duplicate Judge's Copy of all Motions, and any opposition thereto,

Case No. CV-2009-0000183 ORDER SETTING JURY TRIAL Page 3

Def NT Obj

together with supporting affidavits and documents, shall be submitted directly to the Court's chambers in Bannock County. All the duplicates must be stamped "Judge's Copy" to avoid confusion with the original pleading. All other pleadings, notices, etc., should be filed with the Clerk without copies to the Court's chambers.

- (7) TRIAL BRIEFS. Trial briefs are encouraged but not required. If submitted, trial briefs should address substantive factual, legal and/or evidentiary issues the parties believe are likely to arise during the trial, with appropriate citation to authority. Any trial brief should be exchanged between the parties and submitted to the Court, including a duplicate Judge's Copy submitted to chambers in Bannock County, no later than 10 days prior to trial.
- (8) PRE-MARKED EXHIBITS AND AN EXHIBIT LIST IN THE FORM ATTACHED HERETO shall be exchanged between the parties and filed with the Court no later than 10 days prior to trial. Each party shall also lodge with the Court at chambers a duplicate completed exhibit list together with one complete, duplicate marked set of that party's proposed exhibits for the Court's use during the trial. Unless otherwise ordered, Plaintiff shall identify exhibits beginning with the letter "A" and the Defendant shall identify exhibits beginning with the number "1."
- (9) JURY INSTRUCTIONS. Proposed jury instructions and verdict forms requested by any party shall be prepared in conformity with I.R.C.P. 51(a), except that they shall be filed with the Court and exchanged between the parties at least 7 days prior to trial. Except for good cause shown, proposed jury instructions should conform to the pattern Idaho Jury Instructions (IDJI) approved by the Idaho Supreme Court. In addition to submitting written proposed instructions that comply with Rule 51(a), the parties shall also submit both a clean version and a version with cited authority by e-mail to the Court's Clerk, in Word format, at least 7 days prior to trial. Certain "stock" instructions need not be submitted. These will typically include IDJI 1.00, 1.01, 1.03,

Case No. CV-2009-0000183 ORDER SETTING JURY TRIAL Page 4

Det NT Obj

1.03.1, 1.05, 1.09, 1.11, 1.13/1.13.1, 1.15.1, 1.17, 1.20.1, and 1.24.1. It is requested that the parties agree on the basic instruction giving the jury a short, plain statement of the claims, per IDJI 1.07.

- MEDIATION. Pursuant to I.R.C.P. 16(k)(4), the parties are ORDERED to mediate this matter, and the mediation shall comply with I.R.C.P. 16(k). Mediation must be held no later than 30 days prior to trial.
- TRIAL PROCEDURES. A total of THREE (3) trial days have been reserved for this trial. If the parties believe that more trial days will be required, the parties are ORDERED to notify the Court of this request no less than 60 days prior to trial. On the first day of trial, counsel shall report to the Court's chambers at 8:30 a.m. for a brief status conference. Unless otherwise ordered, or as modified during trial as necessary, trial days will begin at 9:00 a.m. and close at or about 3:00 p.m., with two 20 minute recesses taken at approximately 11:00 a.m. and 1:00 p.m.
- (12)HEARINGS OR CONFERENCES WITH THE COURT. All meetings, conferences, and/or hearings with the Court shall be scheduled in advance with the Court's Clerk by calling 208-945-2208, ext 23. No hearing shall be noticed without contacting the Clerk.
- ALTERNATE JUDGES. Notice is hereby given, pursuant to I.R.C.P. 40(d)(1)(G), that an (13)alternate judge may be assigned to preside over the trial of this case, if the current presiding judge is unavailable. The list of potential alternate judges is: 1) Honorable Peter D. McDermott; 2) Honorable Stephen S. Dunn; 3) Honorable Mitchell W. Brown; 4) Honorable William H. Woodland; 5) Honorable Richard T. St. Clair.

DATED January 27, 2012.

DAVID C. NYE

District Judge

Case No. CV-2009-0000183 ORDER SETTING JURY TRIAL Page 5

DEF NIT Obi

CERTIFICATE OF SERVICE

	n the 30 day of January, 2012, I served a true and tent upon each of the following individuals in the manner
PLAINTIFF ATTORNEY: Nathan M Olsen 485 "E" Street Idaho Falls ID (208) 524-3391	☐ Faxed ☐ Hand Delivered 爲 Mailed
DEFENDANTS ATTORNEY: Randall C. Budge P.O. Box 1391 Pocatello ID 83204	□ Faxed □ Hand Delivered ⋉ Mailed
Brad H Bearnson 399 North Main, Suite 270 Logan UT 84321 (435) 752-6301	☐ Faxed ☐ Hand Delivered ☐ Mailed
Phillip John Collaer PO Box 7426 Boise ID 83707 (208) 344-5510	□ Faxed □ Hand Delivered ✓ Mailed

Deputy Clerk

Case No. CV-2009-0000183 ORDER SETTING JURY TRIAL Page 6

Def NT Obj

EXHIBIT "B"

Def NT Obj

Randall C. Budge (ISB No. 1949)
Mark S. Shaffer (ISB No. 7559)
RACINE, OLSON, NYE, BUDGE & BAILEY, CHARTERED
P.O. Box 1391; 201 E. Center Street
Pocatello, Idaho 83204-1391
Telephone: 208-232-6101
Facsimile: 208-232-6109
rcb@racinelaw.net

Attorneys for Defendant

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BEAR LAKE

STEVEN CUMMINGS, an i residing in Montana,	individual)	
residing in Montana,)	Case No. CV-09-183
Plaintiff,	j	
VS.)	AFFIDAVIT OF LORI THORNOCK
70.)	THE DESCRIPTION OF THE PROPERTY OF THE PROPERT
ROGER L. STEPHENS, an i residing in Providence, Utah, I-X.	,	
Defendants.)	
STATE OF IDAHO) : ss.	
County of Bear Lake)	

LORI THORNOCK, being first duly sworn on oath, deposes and states as follows:

1. I am a United States citizen. I am over 21 years of age and competent to testify regarding the facts and matters stated herein, which are based on my personal knowledge.

AFFIDAVIT OF LORI THORNOCK - Page I

Def MObj

- 2. I am currently the Office Manager of Northern Title Company of Idaho ("Northern Title") located in Montpelier, Idaho. I am familiar with the office policies and procedures in place during 2007.
- 3. In 2007 I was the Escrow Officer/Manager at Northern Title, which handled a transaction whereby Steven Cummings purchased property from the Roger L. and Barbara L. Stephens Family Trust ("Stephens Family Trust").
- 4. I assisted in the closing of the transaction between Steven Cummings and the Stephens Family Trust that occurred on or about August 3, 2007.
- 5. On or about July 16, 2007, Evan Skinner of Exit Realty of Bear Lake informed Northern Title of a potential transaction between an undisclosed buyer and ROGER L. STEPHENS and BARBARA L. STEPHENS, TRUSTEES OF THE ROGER L. AND BARBARA L. STEPHENS FAMILY TRUST and requested a title commitment covering the Stephens Family Trust property located West of Highway 30.
- 6. Based upon these instructions, Northern Title prepared the legal description used for the Commitment for Title Insurance intending it to cover the Stephens' property located West of Highway 30.
- 7. On or about July 31, 2007, Northern Title released the initial Commitment for Title Insurance referenced as Order No. NTBL-1183 ("Title Commitment") to Exit Realty. This Title Commitment was intended to cover only that portion of the Stephens' property lying West of Highway 30. However, the legal description contained in the initial Title Commitment failed to contain the necessary exclusionary language limiting the property to that lying West of Highway 30. The Title Commitment contained a plat map with arrows clearly indicating that the property involved

AFFIDAVIT OF LORI THORNOCK - Page 2

included only real property located West of Highway 30. A true and correct copy of the Title Commitment, as delivered to Exit Realty, is attached hereto as Exhibit "1" and incorporated herein by reference.

- 8. Within a day or two of delivering the initial Title Commitment to Exit Realty, Dorothy Julian contacted our office to confirm that the Title Commitment included only property located West of Highway 30. We then checked our file to verify that the described property included only property located West of Highway 30. In making this review it was discovered that the required exclusionary language was not included in the legal description of the property attached to the Title Commitment.
- 9. Shortly thereafter, we issued a revised Commitment for Title Insurance ("Second Title Commitment") inserting the exclusionary language after Parcel A, as listed. Again, this revised legal description was intended to describe only land on the West side of Highway 30. Unfortunately, the exclusionary language was misplaced and should have been located at the top of the entire legal description. However, the Second Title Commitment again contained a plat map with arrows all clearly indicating that the property involved included only real property located West of Highway 30. The plat map attached to the Second Title Commitment contains arrows identifying the property lying West of Highway 30. Upon information and belief, the Second Title Commitment was used for the closing of the transaction between Steven Cummings and the Stephens Family Trust. A true and correct copy of the Second Title Commitment is attached hereto as Exhibit "2".

AFFIDAVIT OF LORI THORNOCK - Page 3

Def NT Obj

- 10. We delivered the Second Title Commitment to Exit Realty, prior to the August 3 closing and confirmed with Dorothy Julian verbally that the legal description identified only the property located West of Highway 30.
- 11. Based on what I was told by both Evan Skinner and Dorothy Julian (the real estate agents involved), I was of the understanding and belief that they and Steven Cummings were all aware that the property being purchased by Mr. Cummings was only that located West of Highway

 30.
- During the closing of the transaction, Steven Cummings elected to courtesy close at his 1031 Exchange company located in Utah. A copy of the Second Title Commitment was included in the closing material sent by Northern Title to Steven Cummings's 1031 exchange company, acting as courtesy closer. In fact, one of the documents that I received back from Mr. Cummings side of the closing was the plat map attached hereto as Exhibit 3.
- During the closing of the transaction, Steven Cummings signed a copy of Northern Title's Escrow General Provisions. A true and correct copy of the Escrow General Provisions is attached hereto as Exhibit "4" and incorporated herein by reference. Paragraph 11 of the Escrow General Provisions states that Steven Cummings "acknowledges receipt of a copy of, and an opportunity to review" a copy of the title commitment issued by Northern Title.
- On August 3, 2007, Northern Title recorded a Warranty Deed as Instrument #199303 in the records of Bear Lake County, Idaho ("Original Warranty Deed"). The legal description attached to the Original Warranty Deed was the same Exhibit A attached to Exhibit 1, hereto. Again, when the legal description was prepared, it was intended to describe and I believed it described only

AFFIDAVIT OF LORI THORNOCK - Page 4

Def NT Obj

that portion of the Stephens' property lying West of Highway 30. A true and correct copy of the Original Warranty Deed, as recorded, is attached hereto as Exhibit "5".

- 15. On or about November 8, 2007, I was contacted by Roger Stephens, who indicated to me that he was told by the Bear Lake County Assessor's office that there was an error in the legal description on Exhibit A attached to the Original Warranty Deed, and that he should contact Northern Title to prepare and record a Correction Deed to correct the legal.
- After speaking with Roger Stephens, I reviewed the documentation and platted the legal description involved in the transaction between Steven Cummings and the Stephens Family Trust and identified the error in the legal description on Exhibit A to the Original Warranty Deed. The error was made in the placement of the language "EXCEPT ALL OF THAT PORTION OF THE FOLLOWING DESCRIBED LAND LYING EASTERLY OF U.S. HIGHWAY 30" ("Exception Language"). The Exception Language had been placed on Exhibit A following the legal description for Parcel A, when the Exception Language should have been placed at the top of Exhibit A, thereby covering the legal descriptions for all parcels involved in the transaction.
- Title was still in possession of the Original Warranty Deed. Northern Title had been holding the Original Warranty Deed since the August 3, 2007 closing pursuant to further verbal instructions from Steven Cummings, as to the proposed grantee. Mr. Cummings had asked that the property he was purchasing from the Stephens Family Trust be put into his "Trust" prior to issuing the owners policy. In order to comply with Mr. Cummings' request, Northern Title was required to have a copy of Mr. Cummings' Trust to ensure that the Warranty Deed was in compliance with the Trust instruction.

AFFIDAVIT OF LORI THORNOCK - Page 5

Tref NT Obj

On November 8, 2007, I was still waiting for Steven Cummings to provide Northern Title with a copy of his Trust.

- 18. On or about November 8, 2007, after determining that scrivener's error had occurred in the legal description on Exhibit A to the Original Warranty Deed, I received authorization from Paul Davis, President of Northern Title, to correct and re-record the Warranty Deed. I also attempted to contact Steven Cummings via his cell phone, leaving several messages, but did not receive a response. Based upon the instructions given by the real estate agents, and the understanding of Northern Title that the transaction included only property on the west side of Highway 30, I corrected the legal error on the Original Warranty Deed by placing "x" marks through the Exception Language and by placing the following language at the top of Exhibit A: "**THE FOLLOWING PARCELS ARE CONVEYED EXCEPTING THEREFROM ANY PORTION LYING EASTERLY OF U.S. HIGHWAY 30**". These corrections to the Original Warranty Deed were made to reflect the understanding and original intent of Northern Title as to the property covered in the transaction.
- 19. On November 8, 2007, I re-recorded the corrected Warranty Deed as Instrument #199911 in the records of Bear Lake County, Idaho ("Correction Warranty Deed"). A true and correct copy of the Correction Warranty Deed is attached hereto as Exhibit "6" and incorporated herein by reference.
- On April 9, 2008, Northern Title issued its Owners Policy of Title Insurance ("Title Policy") to Steven Cummings. The Title Policy contained a plat map with arrows clearly indicating that the property involved included only the real property located West of Highway 30. The plat map attached to the Title Policy was exactly the same as the plat map attached to the Title Commitment and the Second Title Commitment. A true and correct copy of the Title Policy is attached hereto as

AFFIDAVIT OF LORI THORNOCK - Page 6

Det NT Obj

Exhibit "7" and incorporated herein by reference. The Title Policy as issued to Steven Cummings includes only property located West of Highway 30, as identified on "Exhibit A" of the Title Policy.

FURTHER SAITH AFFIANT NAUGHT.

Dated this / Z day of September, 2010.

LORI THORNOCK

SUBSCRIBED AND SWORN TO before me this 17 day of September, 2010.

(SEAL)



NOTARY PUBLIC FOR IDAHO
Periding at: 1000 d. Lake Council

My Commission Expires: 01-26-2016

AFFIDAVIT OF LORI THORNOCK - Page 7

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 2 day of September, 2010, I served a true and complete copy of the foregoing document on the following persons in the manner indicated:

Nathan M. Olsen Beard, St. Clair, Gaffney PA 2105 Coronado Street Idaho Falls, Idaho 83404-7495	[M] [] []	U.S. Mail/Postage Prepaid Hand Delivery Overnight Mail Fax
Brad H. Bearnson Bearnson & Peck, L.C. 399 North Main, Ste 300 Logan, Utah 84321		U.S. Mail/Postage Prepaid Hand Delivery Overnight Mail Fax

EXHIBIT "C"





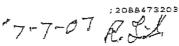
196 South 4th Street Montpelier, Idaho 83254

Office (208) 847-3200 Fax (208) 847-3203

Facsimile Transmittal Sheet	
FROM: DOT	
TO: Steve Cumings 7/26	
FAX NUMBER 801 756 3150	
NUMBER OF PAGES (INCLUDING COVER)	
COMMENTS Stephen's Conti	ract



07-25-07;12:19PM:





RE-21 REAL ESTATE PURCHASE AND SALE AGREEMENT

THIS IS A LEGALLY BINDING CONTRACT. READ THE ENTIRE DOCUMENT INCLUDING ANY ATTACHMENTS. IF YOU HAVE ANY QUESTIONS, CONSULT YOUR ATTORNEY AND/OR ACCOUNTANT BEFORE SIGNING.

	1)
3	LISTING AGENCY EXT REALTY OF B.L. Office Phone# Fax#
4	Listing Agent Dore Thy Rath E-Mail
5	SELLING AGENCY EXT ROATTY of BL Office Phone # \$67-370% Fax # 847-3103
5	Selling Agent Edan Share E-Mail Phone#
8	1. BUYER: Three Ra Ranch of The (Hereinafter collect
8 10	"BUYER") agrees to purchase and the understance SE LER purpos to call the following described real estate perspector referred to as "PREMISES"
71	COMMONLY KNOWN AS 570 has kanaly legally described as: See Aldreadem Ork
12 13	
14	OR Legal Description Affached as addendum #(Addendum must accompany original offer,)"
15 16 17	2. \$ 700.00() PURCHASE PRICE: Server Runder & Theregand DOLLARS, payable upon the following TERMS AND CONDITIONS (not including closing casts):
18	3. FINANCIAL TERMS: Note: A+C+D+E must add up to total purchase price.
20	5 (80 0 - (A). EARNEST MONEY: BLYER hereby deposits One Thousand DOLLARS as
21 22	Earnest Money evidenced by: cash personal check cashler's check note (due date):
23	other and a receipt is hereby acknowledged. Earnest Money to be deposited in trust account \[\] upon receipt, or \[\] upon acceptance by all parties and shall be held by: \[\] Listing Broker \[\] Selling Broker
24 25	other for the benefit of the parties hereto. The responsible Broker shall be
28	(B). ALL CASH OFFER: 🛱 NO 🗌 YES If this is an all cash offer do not complete lines 32 through 61, fill blanks with
27 28	"0" (ZERO.) IF CASH-OFFER, BUYER'S OBLIGATION TO CLOSE SHALL NOT BE SUBJECT TO ANY FINANCIAL CONTINGENCY. BUYER agrees to provide SELLER withinbusiness days from the date of acceptance of this agreement by all parties, evidence of
28 30	sumcient funds and/or proceeds necessary to close transaction. Acceptable documentation includes, but is not limited to, a copy of a recent bank or
31	financial statement or contract(s) for the sale of BUYER'S current residence or other property to be sold.
32 33	\$(C). NEW LOAN PROCEEDS: This Agreement is contingent upon BUYER obtaining the following financing:
34 55	☐ RURAL DEVELOPMENT, ☐ OTHER with interest not to exceed % for a period ofyear(s) at: ☐ Fixed Rate
36	OtherBUYER shall pay no more thanpoint(s) plus origination fee if any. SELER shall pay no more thanpoint(s). Any reduction in points shall first accrue to the benefit of theBUYER SELER Divided Equally N/A.
37 3B	SECOND LOAN of \$ with interest not to exceed % for a period of year(s) at Fixed Rate
39	Other BLYER shall now no more than policife plus equippering fee if any SELLER shall now no more than policife) Any
45 41	reduction in points shall first accrue to the benefit of the DuyER SELLER Divided Equally NA.
42 43	LOAN APPLICATION:BUYER has applied shall apply for such loan(s) within business day(s) of SELLER'S acceptance. Within business days of final acceptance of all parties, BUYER agrees to furnish SELLER with a written confirmation showing lender approval of
44 46	credit report, income verification, debt.ratios in a manner acceptable to the SELLER(S) and subject only to satisfactory appraisal and final lender
40 48	underwriting. If such written confirmation is not received by SELLER(S) within the strict time allotted, SELLER(S) may at their option cancel this agreement by notifying BUYER(S) in writing of such cancellation withinbusiness day(s) after written confirmation was required. If SELLER does
<i>4</i> 7 48	not cancel within the strict time period specified as set forth herein. SELLER shall be deemed to have accepted such written confirmation of lender approval
49	and shall be deemed to have elected to proceed with the transaction. SELLER'S approval shall not be unreasonably withheld. If an appraisal is required by lender, the property must appraise at not less than purchase price or BUYER'S Earnest Money may be returned at BUYER'S request. BUYER
51) 51	may also apply for a loan with different conditions and costs and close transaction provided all other terms and conditions of this Agreement are
52	fulfilled, and the new loan does not increase the costs or requirements to the SELLER FHA I VA: If applicable, it is expressly agreed that notwithstanding any other provisions of this contract, BUYER shall not be obligated to complete the
53 54	prurchase of the property described herein or to incur any penalty or forfeiture of Earnest Money deposits or otherwise unless BUYER has been given in
55 56	accordance with HUD/FHA or VA requirements a written statement by the Federal Housing Commissioner, Veterans Administration or a Direct Endorsement lender setting forth the appraised value of the property of not less than the sales price as stated in the contract. SELLER agrees to pay fees
57	requirement of the second of t
58 58	** CD). ADDITIONAL FINANCIAL TERMS: Additional financial terms are specified under the heading "OTHER TERMS AND/OR CONDITIONS" (Section 4).
50	Additional financial terms are contained in a FINANCING ADDENDUM of same date, attached hereto, signed by both parties.
31 32	Line E below is the total of the Purchase Price minus Lines A, C, and D. Only use numbers in these lines.
33	* 20200 (Pb.) APPROXIMATE FUNDS DUE FROM BUYERS AT CLOSING (Not including closing costs): Cash at closing to be paid by BUYER at closing in GOOD FUNDS, includes: cash, electronic transfer funds, certified check or cashier's check. NOTE: If any
34 35	of above loans being Assumed or taken "subject to", any net differences between the approximate balances and the actual balance of said loan(s)
35 36 37 38	shall be adjusted at closing of escrow in: Cash Other.
58 19	BUYER'S Initials (A) y Date 157 / V SELLER'S Initials (A) Date 1-3-0/
0	This form is printers and distributed by the Idaho Association of REALTORSO, Inc. This form has been designed for and is provided only for use by real estate professionals who are members of the National Association of REALTORSO. USE BY ANY OTHER PERSON IS PROHIBITED. Copyright Idaho Association of REALTORSO, Inc. All rights reserved. RE-21 RESIDENTIAL PURCHASE AND SALE AGREEMENT PAGE 1 of 6 <u>JULY 2006 COUTION</u>

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74	FCATACLT P
72	
78	4. OTHER TERMS AND/OR CONDITIONS: This Agreement is made subject to the following special terms, considerations and/or contingencies
77	which must be satisfied prior to closing
78 79	
81 18 :	The state of the s
E2	
83	
84	Arougho has not Bon Surveyed Contract upon Apportant coming the
85	at purhas pring + home to be inscribed a precinal to begans appendict.
85	Buttons 70 base opition to Do a 1081 exchange
87	
38	5. ITEMS INCLUDED & EXCLUDED IN THIS SALE; All existing fixtures and fiftings that are attached to the property are INCLUDED IN THE FURCHASE
89 98	PRICE (unless excluded below), and shall be transferred free of liens. These include, but are not limited to, all attached floor coverings, attached television
91	antennae, satellie dish and receiving equipment, attached plumbing, bathroom and lighting fixtures, window screens, screen doors, storm windows, storm doors, all window coverings, garage door opener(s) and transmitter(s), exterior trees, plants or shrubbery, water heating apparatus and fixtures, attached fireplace
B2	equipment, awnings, ventilating, cooling and heating systems, all ranges, ovens, bulli-in dishwashers, fuel tanks and imigation fixtures and equipment, all water
93	systems, wells, springs, water rights, dilches and dilch rights, if any, that are appurenant finereto that are now on or used in connection with the premises
94	and shall be included in the sale unless otherwise provided herein. BUYER should satisfy himselfilherself that the condition of the included items is acceptable. It
85	is agreed that any litem included in finis section is of nominal value less than \$100.
96 97	(A) ADDITIONAL ITEMS SPECIFICALLY INCLUDED IN THIS SALE: Disc. 4385 . Troctor Fut.
88	wind ADDITIONAL (LEWIS SECUPICALLY INCLUDED IN THIS SALE: 1785. The Transfer of Legisland The Seller 108 Shes TO Legisland
gg.	All additionale wheel then of all hand bong.
100	
101	(B). ITEMS SPECIFICALLY EXCLUDED IN THIS SALE:
105	
104 105	 TITLE CONVEYANCE: Title of SELLER is to be conveyed by warranty deed, unless otherwise provided, and is to be marketable and insurable except for rights reserved in federal patients, state or railroad deeds, building or use restrictions, building and zoning regulations and ordinances of any governmental unit;
105	and rights of way and easements established or of record. Liens, encumbrances or defects to be discharged by SELLER may be paid out of purchase money at
907	date of closing. No liens, encumbrances or defects which are to be discharged or assumed by BUYER or to which title is taken subject to, exist unless otherwise
302 109	specified in this Agreement.
110	7. TITLE INSURANCE; There may be types of title insurance coverages available other than those listed below and parties to this
111	agreement are advised to talk to a title company about any other coverages available that will give the BUYER additional coverage.
† †2 † †3	(A). PRELIMINARY TITLE COMMITMENT: Prior to closing the transaction, SELLER or Buyer shall furnish to BUYER a pretiminary commitment of a
774	tible insurance policy showing the condition of the title to said premises. BUYER shall havebusiness day(s) from recalpt of the preliminary commitment or
7.75	not fewer than twenty-four (24) hours prior to closing, within which to object in writing to the condition of the title as set forth in the preliminary commitment. If
775	BUYER does not so object, BUYER shall be deemed to have accepted the conditions of the tille. It is agreed that if the title of said premises is not marketable,
117	or cannot be made so withinbusiness day(s) after notice containing a written statement of defect is delivered to SELLER, BUYER'S Eamest Money
178 179	deposit will be returned to BUYER and SELLER shall pay for the cost of title insurance cancellation fee, escrow and legal fees, if any.
120	(B). TITLE COMPANY: The parties agree that Northern Title Company
121	tocated at shall provide the title policy and preliminary report of commitment.
122	AGUSTANDADE COURTS OF CHIEF POR COLLEGE AND A STANDARD COLLEGE AND A
123 124	(C). STANDARD COVERAGE OWNER'S POLICY: SELLER shall within a reasonable time after closing furnish to BUYER a title insurance policy in the amount of the purchase price of the premises showing marketable and insurable title subject to the liens, encumbrances and defects elsewhere set out in this
125	Agreement to be discharged or assumed by BUYER unless otherwise provided herein. The risk assumed by the title company in the standard coverage
126	policy is limited to matters of public record. BLYER shall receive a ILTA/ALTA Owner's Policy of Title Insurance. A fille company, at BUYER's request, can
127	provide information about the availability, desirability, coverage and cost of various fitte insurance coverages and endorsements. If BUYER desires title
128	coverage other than that required by this paragraph, BUYER shall instruct Closing Agency in writing and pay any increase in cost unless otherwise provided
129 130	herein.
31	(D), EXTENDED COVERAGE LENDER'S POLICY (Mortgagee policy): The lender may require that BUYER (Borrower) furnish an Extended Coverage
32	Lender's Policy. This extended coverage lender's policy considers matters of public record and additionally insures against certain matters not shown in the
35	public record. This extended coverage lender's policy is solely for the benefit of the lender and only protects the lender.
34 35	8. MECHANIC'S LIENS - GENERAL CONTRACTOR DISCLOSURE STATEMENT NOTICE: BUYER and SELLER are hereby notified that,
38	subject to Idaho Code §45-525 of seq., a "General Contractor" must provide a Disclosure Statement to a homeowner that describes certain rights afforded
37	to the homeowner (e.g. lien waivers, general liability insurance, extended policies of lifle insurance, surety bonds, and sub-contractor information). The
38	Disclosure Statement must be given to a homeowner prior to the General Contractor entering into any contract in an amount exceeding \$2,000 with a
39	homeowner for construction, alteration, repair, or other improvements to real property, or with a residential real property purchaser for the purchase and
40	sale of newly constructed property. Such disclosure is the responsibility of the General Contractor and it is not the duty of your agent to obtain this
41	information on your hoholf Vous are advised to consult with any Consul Control to Idaha Code Rdf. 575 of one reporting the Conservation

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Contractor Disclosure Statement

SELLER'S Initials (R.S.)(B.S.

	152	RE-21 RESIDENTIAL PURCHASE AND SALE AGREEMENT PAGE 3 OF SULLY, 2006 EDITION	# ES070207 B
	151	PROPERTY ADDRESS: STy D. Land Kanning	味ニンルグービ
	164	1 TELESTIMONIA IV	
	155 156	9. INSPECTION:	and the second second
	157	(A). BUYER chooses (I) to have inspection in not to have inspection. If BUYER chooses not to have inspection skip	
	158	have the right to conduct inspections, investigations, tests, surveys and other studies at BUYER'S expense. BUYER shall, v	
	158	day(s) of acceptance, complete these inspections and give to SELLER written notice of disapproved of items. BUYER is st	
	160	these rights and to make BUYER'S own selection of professionals with appropriate qualifications to conduct inspections of the e	nule property.
	151 152 163	(B). FHA INSPECTION REQUIREMENT, If applicable: "For Your Protection: Get a Home Inspection", HUD 92564-before execution of this agreement.	ON must be signed on a
	164	ICL DATING ATIONING BROWN OF INCORPORTION OF INVOICED	
	165 166 157 168 169	(C). SATISFACTION/REMOVAL OF INSPECTION CONTINGENCIES: f). If BUYER does not within the strict time period specified give to SELLER written notice of disapproved items, be deemed to have: (a) completed all inspections, investigations, review of applicable documents and disclosures; (b) el transaction and (c) assumed all liability, responsibility and expense for repairs or corrections other than for items which SELLE writing to repair or correct. 	ected to proceed with the
	170	2). If BUYER does within the strict time period specified give to SELLER written notice of disapproved items,	BUYER shall provide to
	171 172 178 174 175	SELLER perfinent section(s) of written inspection reports. SELLER shall have	o respond in writing. The LER agrees to correct the
	176	2) is the OFF CP clark and the property of the state	- naminal experience than the
	177 178 178	3). If the SELLER elects not to correct the disapproved items, or does not respond in writing within the strict time BUYER(S) have the option of either-continuing the transaction without the SELLER being responsible for correcting these SELLER written notice within	deficiencies or giving the
	180	AT IS DENOTED the prototion and within within the control of the prototion and the prototion of the prototion and the pr	Il annabanisais ha danmad
	181 182	4). If BUYER does not give such written notice of cancellation within the strict time periods specified, BUYER shat to have elected to proceed with the transaction without repairs or corrections other than for literas which SELLER has othe repair or correct. SELLER shall make the property available for all Inspections. BUYER shall keep the property free and class.	rwise agreed in writing to ar of liens; indemnify and
	152 164	hold SELLER harmless from all liability, claims, demands, damages and costs; and repair any damages arising from the in may be made by any governmental building or zoning inspector or government employee without the prior consent of SELLE	
	185	law.	7
	186	\sim	
	167	10. LEAD PAINT DISCLOSURE: The subject property 🛆 is 🔲 is not defined as "Target Housing" regarding lead-base	d paint or lead-based paint
	188	hazards. If yes, BUYER hereby acknowledges the following: () BUYER has been provided an EPA approved lead-based	
	188	pamphiet, "Protect Your Family From Lead in Your Home", (b) receipt of SELLER'S Disclosure of Information and Acknow	
	190 191	bean provided with all records, test reports or other information, if any, related to the presence of lead-based paint hazards	
	192	this contract is confingent upon BUYERS right to have the property tested for lead-based paint hazards to be confined or the contingency will terminate, (d) that BUYER hereby X waives does not waive this right, (e)	
	193	unacceptable amounts of lead-based paint on the premises, BUYER has the right to cancel the contract subject to the option of	
		in writing) to elect to remove the lead-based paint and correct the problem which must be accomplished before closing.	f) that if the contract is
	995	canceled under this clause, BUYER's earnest money deposit will be returned to BUYER.	, , , , , , , , , , , , , , , , , , , ,
1	186		
7	197 198 1 9 9	11. SQUARE FOOTAGE VERIFICATION: BUYER IS AWARE THAT ANY REFERENCE TO THE SQUARE FOOTAGE OF IMPROVEMENTS IS APPROXIMATE IF SQUARE FOOTAGE IS MATERIAL TO THE BUYER, IT MUST BE VERIFIED DURING T	
2	200	12. SELLER'S PROPERTY DISCLOSURE FORM: If required by Title 55, Chapter 25 Idaho Code SELLER shall within te	n (10) days after execution
2		of this Agreement provide to BUYER "SELLER'S Property Disclosure Form" or other acceptable form. BUYER has received Disclosure Form" or other acceptable form prior to signing this Agreement: Yes No N/A	
	D¢	13 COMENANTS CONDITIONS AND DESTRICTIONS (COS DISC TRATE)	annu of the Para Die St
2		13. COVENANTS, CONDITIONS AND RESTRICTIONS (CC& R'S): BUYER is responsible to obtain and review applicable). BUYER has reviewed CC& R's. Yes No	i cupy of sile code it's (ii
		14. SUBDIVISION HOMEOWNER'S ASSOCIATION: BUYER is aware that membership in a Home Owner's Associa	tion may be married and
		BUYER agrees to abide by the Articles of Incorporation, By-Laws and rules and regulations of the Association. BUYER	
		Property may be subject to assessments levied by the Association described in full in the Declaration of Covenants, Col	
2		BUYER has reviewed Homeowner's Association Documents: Yes No NA Association feesidues are \$,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,
2		perF BUYER SELLER N/A to pay Homeowner's Association SET UP FEE of \$	and/or property
2		TRANSFER FEES of \$ at glosing.	. 1 1 2
2	13		
2	14	15. "NOT APPLICABLE DEFINED:" The letters "n/a," "N/A," "n.a.," and "N.A." as used herein are abbreviations of the ten	m "not applicable." Where
2	15	this agreement uses the term "not applicable" or an abbreviation thereof, it shall be evidence that the parties have conti	emplated certain facts or
2		conditions and have determined that such facts or conditions do not apply to the agreement or transaction herein.	
21	18	BUYER'S Initials (8)) Date $7/22/7$ SELLER'S Initials (8)) (8)	Date <u>7-5-07</u>
55555	19	This form is pringed and distributed by the Idaho Association of REALTORS (S. Inc. This form has been designed for and is provided only for use by real estate profi	
22	20 21 8	National Association of REALTORS®. USE BY ANY OTHER PERSON IS PROHIBITED, Copyright idaho Association of REALTORS®, inc. All rights RE-21 RESIDENTIAL PURCHASE AND SALE AGREEMENT PAGE 3 of 6 JULY. 2006 EDITION	reserved

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RE-21 RESIDENTIAL PURCHASE AND SALE AGREEMENT PAG	E 4 of 6 JULY, 2008 EDITION		-	~~~	
PROPERTY ADDRESS: STYD Land	(Management and the Principles)	四#	870	7.02.87	Ē,

	BUYER	SELLER	Shared Equally	AM.		:BLINSER ,	SELLER	Shered Equally	N/A
Appraisal Fee	X			·	Title Ins. Standard Coverage Owner's Polloy		Х		
Appraisal Re-Inspection Fee				χ	Tille Ins. Extended Coverage Lender's Policy – Mortgagee Policy				Χ
Closing Esoraw Fee			X		Additional Title Coverage				У
Lander Dooument Preparation Fee		The share of the state of the s		X	Fuel in Tank – Amount to be Determined by Supplier	,			X
Tax Service Fae				X	Well inspection				X
Flood Certification/Tracking Fee				K	Septic Impections				¥
Lender Required Inspections				ų,	Septic Pumping			,	X
Attorney Contract Preparation or Review Fee				K	Survey				
									. , .
•									

7.	OCCUPANCY:	BUYER	O does		does no	t intend	to	оссиру	property	85	BUYER'S	primary	residence.
----	------------	-------	--------	--	---------	----------	----	--------	----------	----	---------	---------	------------

18. FINAL WALK THROUGH: The SELLER grants BUYER and any representative of BUYER reasonable access to conduct a final walk
through inspection of the premises approximatelycalendar day(s) prior to close of escrow, NOT AS A CONTINGENCY OF THE SALE, but
for purposes of satisfying BUYER that any repairs agreed to in writing by BUYER and SELLER have been completed and premises are in
substantially the same condition as on acceptance date of this contract. SELLER shall make premiees available for the final walk through and
agrees to accept the responsibility and expense for making sure all the utilities are turned on for the walk through except for phone and cable. If
BUYER does not conduct a final walk through, BUYER specifically releases the SELLER and Broker(s) of any liability.

19. RISK OF LOSS: Prior to closing of this sale, all risk of loss shall remain with SELLER. In addition, should the premises be materially damaged by fire or other destructive cause prior to closing, this agreement shall be void at the option of the BUYER.

20. CLOSING: On or before the closing date, BUYER and SELLER shall deposit with the closing agency all funds and instruments necessary to complete this transaction. Closing means the date on which all documents are either recorded or accepted by an escrow agent and the sale proceeds are available to SELLER. The closing shall be no later than (Date)
The parties agree that the CLOSING AGENCY for this transaction shall be Novi heave Vi The
located at
If a long-term escrow / collection is involved, then the long-term escrow holder shall be
21. POSSESSION: BUYER shall be enlitted to possession in upon closing or date time A.M. P.M.
Property taxes and water assessments (using the last available assessment as a basis), rents, interest and reserves, liens, encumbrances or obligations assumed and utilities shall be pro-rated as of
22. SALES PRICE INFORMATION: SELLER and BUYER hereby grant permission to the brokers and either party to this Agreement, to disclose
sale data from this transaction, including selling price and property address to fine local Association / Board of REALTORS®, multiple listing service, its

sale data from this transaction, including selling price and property address to fire local Association / Board of REALTORS®, multiple listing service, its members, its members' prospects, appraisers and other professional users of real estate sales data. The parties to this Agreement acknowledge that sales price information compiled as a result of this Agreement may be provided to the County Assessor Office by either party or by either party's Broker.

23. FACSIMILE TRANSMISSION: Facsimile or electronic transmission of any signed original document, and retransmission of any signed facsimile or electronic transmission shall be the same as delivery of an original. At the request of either party or the Closing Agency, the parties will confirm facsimile and electronic transmilled signatures by signing an original document.

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BUYER'S Initials (CX)) Date 7/02/07	SELLER'S Initials (R.S.)(B.J.) Date	<u> 7-5-07</u>

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PROPERTY ADDRESS: STYD Law Kould
LS07.02.57 R

24. SINGULAR AND PLURAL terms each include the other, when appropriate.

25. BUSINESS DAYS & HOURS A business day is herein defined as Monday through Friday, 8:00 A.M. to 5:00 P.M. in the local time zone where the subject real property is physically located. A business day shall not include any Saturday or Sunday, nor shall a business day include any legal holiday recognized by the state of Idaho as found in Idaho Code § 73-108. The time in which any act required under this agreement is to be performed shall be computed by excluding the date of execution and including the last day. The first day shall be the day after the date of execution. If the last day is a legal holiday, then the time for performance shall be the next subsequent business day.

26. SEVERABILITY: In the case that any one or more of the provisions contained in this Agreement, or any application thereof, shall be invalid, illiagal or unenforceable in any respect, the validity, lagality or enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

27. ATTORNEY'S FEES: If either party initiates or defends any arbitration or legal action or proceedings which are in any way connected with this Agreement, the prevailing party shall be entitled to recover from the non-prevailing party reasonable costs and attorney's fees, including such costs and fees on appeal.

28. DEFAULT: If BUYER defaults in the performance of this Agreement, SELLER has the option of (1) accepting the Earnest Money as liquidated damages or (2) pursuing any other tawful right and/or remedy to which SELLER may be entitled. If SELLER elects to proceed under (1), SELLER shall make demand upon the holder of the Earnest Money, upon which demand said holder shall pay from the Earnest Money the costs incurred by SELLER'S Broker on behalf of SELLER and BUYER related to the transaction, including, without limitation, the costs of title insurance, escrow fees, appraisal, credit report fees, inspection fees and attorney's fees; and said holder shall pay any balance of the Earnest Money, one-half to SELLER and one-half to SELLER'S Broker, provided that the amount to be paid to SELLER'S Broker shall not exceed the Broker's agreed to commission. SELLER and BUYER specifically acknowledge and agree that if SELLER elects to accept the Earnest Money as liquidated demages, such shall be SELLER'S sole and exclusive remedy, and such shall not be considered a penalty or forfeiture. If SELLER elects to proceed under (2), the holder of the Earnest Money shall be entitled to pay the costs incurred by SELLER'S Broker on behalf of SELLER and BUYER related to the transaction, including, without limitation, the costs of brokerage fee, title insurance, escrow fees, appraisal, credit report fees, inspection fees and attorney's fees, with any balance of the Earnest Money to be held pending resolution of the matter.

If SELLER defaults, having approved said sale and fails to consummate the same as herein agreed, BUYER'S Earnest Money deposit shall be returned to him/her and SELLER shall pay for the costs of title insurance, escrow fees, appraisals, credit report fees, inspection fees, brokerage fees and attorney's fees, if any. This shall not be considered as a waiver by BUYER of any other lawful right or remedy to which BUYER may be entitled:

29. EARNEST MONEY DISPUTE / INTERPLEADER: Notwithstanding any termination of this contract, BUYER and SELLER agree that in the event of any controversy regarding the Earnest Money and things of value held by Broker or closing agency, unless mutual written instructions are received by the holder of the Earnest Money and things of value, Broker or closing agency shall not be required to take any action but may swall any proceeding, or at Broker's or closing agency's option and sole discretion, may interplead all parties and deposit any monles or things of value into a court of competent jurisdiction and shall recover court costs and reasonable attorney's fees.

30. COUNTERPARTS: This Agreement may be executed in counterparts. Executing an agreement in counterparts shall mean the signature of two identical copies of the same agreement. Each identical copy of an agreement signed in counterparts is deemed to be an original, and all identical copies shall together constitute one and the same instrument.

31. REPRESENTATION CONFIRMATION: Check one (1) box in Section 1 and one (1) box in section 2 below to confirm that in this transaction, the brokerage(s) involved had the following relationship(s) with the BUYER(S) and SELLER(S).

i)	t:	
	□A.	The brokerage working with the BUYER(S) is acting as an AGENT for the BUYER(S).
	□B.	The brokerage working with the BUYER(S) is acting as a LIMITED DUAL AGENT for the BUYER(S), without an ASSIGNED AGENT
		The brokerage working with the BUYER(S) is acting as a LIMITED DUAL AGENT for the BUYER(S) and has an ASSIGNED AGENT acting solely on behalf of the BUYER(S).
n 2	ДD.	The brokerage working with the BUYER(S) is acting as a NONAGENT for the BUYER(S).
	X/A	The brokerage working with the SELLER(S) is acting as an AGENT for the SELLER(S).
	∐B.	The brokerage working with the SELLER(S) is acting as a LIMITED DUAL AGENT for the SELLER(S), without an ASSIGNED AGENT
		The brokerage working with the SELLER(S) is acting as a LIMITED DUAL AGENT for the SELLER(S) and has an ASSIGNED AGENT acting solely on behalf of the SELLER(S).
	□ o.	The brokerage working with the SELLER(S) is acting as a NONAGENT for the SELLER(S).

Each party signing this document confirms that he has received, read and understood the Agency Disclosure Brochure adopted or approved by the Idaho real estate commission and has consented to the relationship confirmed above. In addition, each party confirms that the brokerage's agency office policy was made available for inspection and review. EACH PARTY UNDERSTANDS THAT HE IS A "CUSTOMER" AND IS NOT REPRESENTED BY A BROKERAGE UNLESS THERE IS A SIGNED WRITTEN AGREEMENT FOR AGENCY REPRESENTATION.

REPRESENTATION.	
BUYER'S Initials () Date 7/02/17 SELLER'S Initials () Date 7/2/07	

BUYER'S Initials () Date / 2 SELLER'S Initials () Date / 5 Titis form is pringlet and distributed by the Idaho Association of REALTORS&, inc. This form has been designed for and in provided only for use by real estate professionals who are members of the National Association of REALTORS&, USE BY ANY OTHER PERSON IS PROFIBITED. Copyright Idaho Association of REALTORS&, inc. All rights reserved.

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34		. IDM
34: 34:		10# ESUTAZOT B.
346	the second of them have	IDF: L 2 V LV LL)
3-47 3-48 3-49 3-50	32. ENTIRE AGREEMENT: This Agreement contains the enfire A prior Agreements between the parties respecting such matters. No vice representations not expressly set forth herein shall be binding upon either the parties of the parties of the parties.	Agreement of the parties respecting the matters herein set forth and supersedes all warranties, including, without limitation, any warranty of habitability, agreements or her party.
351	33. TIME IS OF THE ESSENCE IN THIS AGREEMENT.	•
352 352	34. AUTHORITY OF SIGNATORY: If BUYER or SELLER is a	corporation, partnership, trust, estate, or other entity, the person executing this
354 355	agreement on its behalf warrants his or her authority to do so and to b	and BUYER or SELLER.
355	35. ACCEPTANCE: BILYER'S offer is made subject to the acceptan	ice of SELLER on or before (Date) 1 talk / /a 0 7 at (Local Time
357	in which property is located) 5 DAM. TAP.M. If SELLE	R does not accept this Agreement within the time specified, the entire Earnest
355	Money shall be refunded to BUYER on demand.	
359 360	36. BUYER'S SIGNATURES:	
381		•
362	SEE ATTACHED BUYER'S ADDENDUM(S): (Specify n	umber of BUYER addendum(s) attached.)
363	There - Ban Dail I	
364	BUYER Signature	BUYER (Print Name)
365	BUYER Signature of Charles of Date 7/52/7 Time /1:28 DAM. DAM.	
366 367	,	
368	Address	City State Zip
389	E-Mail Address	Fax#
371		
372 573		likely rivery types are made later yangs haden been stade haden were made to the court of the determinant later and the court are been court of the
374	BUYER Signature	BUYER (Print Name)
375 376	Data	•
377	Date Time A.M. P.M.	Phane #Cell#
378 379	Address	CityStateZp
380	E-Mail Address	Fax#
\$61 382		
383	37. SELLER'S SIGNATURES: On this date. Wile hereby approve and accept the transaction set to	forth in the above Agreement and agree to carry out all the terms thereof on
3B4	the part of the SELLER.	DIRECTION OF THE PROPERTY OF THE PROPERTY OF THE PROPERTY OF
385		
386 387	SIGNATURE(S) SUBJECT TO ATTACHED COUNTER OFFER	
388	SIGNATURE(S) SUBJECT TO ATTACHED ADDENDUM(S) #	
389 380		August and
BIET	SELLER Signature	SELLER (Print Name)
392		
805 194	Date Time JA.M. P.M.	Phone # Cell#
195	Address 436 W Conflexione Ot.	City phonesium State Which Zip 8 4332
96		The second second
197 198	E-Mall Address	Fax#
199	The late from the late one has been and the late that the late of	DE 100 car and page page page page page page base base page one ton use page page ton ton ton the ton
OD	/	
مري _{ع 101}	SELLER Signature	SELLER (Print Name)
02 03	DateTimeA.M. P.M.	Phone # Cell#
D4	INTE DAIN, DP.IVI.	Lubits & Cell
0 5	Address	City State Zip
06		
07 08	E-Mail Address	Fax#
D8		
10 11	CONTRACTOR REGISTRATION # (if applicable)	*
12	This form is printed and distributed by the idaho Association of REALTORSS, Inc. This form has	been designed for and is provided only for use by real asiate professionals who are members of the
13 14	Wellonal Association of REAL TORSOL USE	BY ANY OTHER PERSON IS PROMIBITED. EALTORS®, Inc. All rights reserved.
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RE-21 RESIDENTIAL PURCHASE AND SALE AGREEMENT PAGE 6 of 6 JULY, 2005 EDITION

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RE-15 COUNTER OFFER, JULY 2006 EDITION Page 1 of 1



RE-13 COUNTER OFFER#

ALL

_ (1, 2, 3, etc.)



THIS COUNTER OFFER SUPERCEDES ALL PRIOR COUNTER OFFERS
THIS IS A LEGALLY BINDING CONTRACT, READ THE ENTIRE DOCUMENT INCLUDING ANY ATTACHMENTS. IF YOU HAVE ANY QUESTIONS, CONSULTYOUR ATTORNEY AND/OR ACCOUNTANT BEFORE SIGNING.

7	
2	ADDRESS: STEP hens Rauch 10#
3	
4	SELLER: ST-phens Family Trust
5	The parties accept all of the terms and conditions in the above-designated Purchase and Sale Agreement with the following changes:
6	This is a SELLER counter offer. The SELLER reserves the right to withdraw this offer or accept any other offers prior to the receipt of a
7 8	irue copy of signed acceptance of this Counter Offer within the time frame specified herein. This is a BUYER counter offer. The undersigned BUYER reserves the right to withdraw this offer at any time prior to the receipt of a true
8	copy of signed acceptance of this Counter Office within the time frame specified herein.
10 11	PURCHASE PRICE \$ 800,000 EIGHT HUNDRED THOUSAND DOLLARS
12	DOIND PAYMENT 1/3 OF \$800,000 (\$ 266,061)
13	CARRY BALANCE OF \$ 533,353 ON 10 YEAR CONTRACT AT 81/2% INTREST
14	Earnest money lown & 3,000
15	
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20 .	
21	
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25	3 %
26	28.000 - 30.000.
27	To the extent the terms of this Counter Offer modify or conflict with any provisions of the Purchase and Sale Agreement including all prior
28 29	Addendums, the terms in this Counter Offer shall control. All other terms of the Purchase and Sale Agreement including all prior Addendums not modified by this Counter Offer shall remain the same. Buyer and Seller acknowledge the down payment and/or loan amount on
30	Page 1 of Purchase & Sale Agreement may change if purchase price is changed as part of this Counter Offer. Upon its execution by
31 32	both parties, this agreement is made an integral part of the aforementioned Agreement.
33	If a signed acceptance is not delivered on or before (date:) 7 · 18 · 07 at S · 00 DA.M. JP.M. this Counter
34	Offer shall be deemed to have expired.
35 36	DELIVERY: Delivery shall be to the agent/broker working with the maker of the Counter Offer in person, by mail, facsimile or electronic
37	transmission of any signed original document, and retransmission of any signed original document. Retransmission of any signed facsimile
35 39 .	or electronic transmission shall be deemed to be the same as delivery of an original.
40	SELLER adding Attaches FOR Roger Stephens Date 7, 9-07 Time 5:00 DAM JAM
41	SELLER Date Tare DAM CPM
	the Kall of more than
42	BUYER NAMED TO DAME TO DAME OF THE DAME OF
43	BUYER D. (X S Date DAM DPM
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	RE-13 COUNTER OFFER, NULY, 2005 EDITION Page 1 of 1
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Def NT Obj





Evan Skinner #1 CHOICE

e mail- EA homes @ people PC.comy

196 South 4th Street
Montpelier, Idaho 83254
Office: (208)-847-EVAN
Cell: (208) 317-6310
Office: (208) 847-3200
Fax: (208) 847-3203
got it is back Fax
back Fax
call is on cell when a
Sind it

Email: skiev1@gmail.com

Http://www.evanskinner.com

Facsimile Transmittal Sheet
FROM: Evan Skinner
TO: STephen. DATE: 7-25-07
FAX NUMBER 801-756-3150
NUMBER OF PAGES (INCLUDING COVER)
COMMENTS Plane initial + Date Whee X'd + or sign + Date
of Fax Back A.S.A.P or email Back of
Lut me Know when you send it Back
SO I WILL KNOW
Cell # 208-317-6310
Title co said we can close By next Wed.
Do you want to come up or should
We send the papers to you?
Def NT Obj



RE-21 REAL ESTATE PURCHASE AND SALE AGREEMENT



THIS IS A LEGALLY BINDING CONTRACT. READ THE ENTIRE DOCUMENT INCLUDING ANY ATTACHMENTS. IF YOU HAVE ANY QUESTIONS, CONSULT YOUR ATTORNEY AND/OR ACCOUNTANT BEFORE SIGNING.

10# FS072607	DATE_	1014 25,0	7
LISTING AGENCY NOT LISTED	Office Phone#	Fax#	and the second s
Listing AgentE-Mail			
SELLING AGENCY Exit Realty of Bear Lake	Office Phone # 208-4	347-3200 Fax#	208-847-3203
Selling Agent FUAN SKINNAFE-Mall			
1. BUYER: STOCK CHAMINGS "BUYER") agrees to purchase, and the undersigned SELLER agrees to COMMONLY KNOWN AS	to sell the following described real	estate hereinafter refe	(Hereinafter called
OR Legal Description Attached as addendum # 0 10 -	(Addendum must accompany	acainel affar i	
	+ Hundred FI		SAND DOLLARS
3. FINANCIAL TERMS: Note: A+C+D+E must add up to total	purchase price.	,	
\$ 3, DD D, and (A). EARNEST MONEY: BUYER hereby deposited by Earnest Money evidenced by: Cash (X) personal check Cashie other. In trust account Cupon receipt, or Cupon acceptance by all parties here. Other for the benefit of the parties here.	er's check in note (due date); / () and a receipt is hereby and shall be held by: Listing	y acknowledged. Earne Broker A Selling Brok	st Maney to be deposited er
/03/ (B), ALL CASH OFFER: NO X YES If this in "0" (ZERO.) IF CASH OFFER, BUYER'S OBLIGATION TO CLOSE BUYER agrees to provide SELLER withinbusiness sufficient funds and/or proceeds necessary to close transaction. According and spatement or contract(s) for the sale of BUYER'S current res	is an all cash offer do not comp : SHALL NOT BE SUBJECT TO A days from the date of acceptance eptable documentation includes, b	lets lines 32 through (ANY FINANCIAL CONT of this agreement by all ut is not limited to, a co	51, fill blanks with FINGENCY. parties, evidence of
\$	ing mortgage insurance, through [nterest not to exceed% point(s) plus origination fee if any. S YER SELLER Divided Equit	☐ FHA, ☐ VA, ☐ CO for a period of ☐ ☐ SELLER shall pay no m ally ☐ N/A.	NVENTIONAL, [IHFA, rear(s) at: [Fixed Rate to rear point(s).
SECOND LOAN of \$ with intere Other BUYER shall pay no more than point(selection in points shall first accrue to the benefit of the BUYER	st not to exceed% for s) plus origination fee if any. SELL! SELLER Divided Equally	ir a period of) ER shall pay no more (i] N/A.	near(s) at:point(s). Any
LOAN APPLICATION:BUYER if has applied is shall apply for st business days of final acceptance of all parties, BUYER agrees to credit report, income vertication, debt ratios in a manner acceptate underwriting. If such written confirmation is not received by SELL agreement by notifying BUYER(S) in writing of such cancellation with not cancel within the strict time period specified as set forth herein, SEL and shall be deemed to have elected to proceed with the transaction. So by lender, the property must appraise at not less than perchase in may also apply for a loan with different conditions and costs and of fulfilled, and the new loan does not increase the costs or requirements. FHA / VA: If applicable, it is expressly agreed that notwithstanding a purchase of the property described herein or to incur any penalty or to	o furnish SELLER with a written ole to the SELLER(S) and subject ER(S) within the strict time allotte in business day(s) after writ LER shall be deemed to have acce SELLER'S approval shall not be un price or BUYER'S Earnest Money close transaction provided all other to the SELLER any other provisions of this contract	confirmation showing only to satisfactory at ad, SELLER(S) may at the confirmation was repted such written confirmation was repted such writtened at BU ar terms and conditions to BUYER shall not be o	ing lender approval of ppreisal and final lender their option cancel this equired. If SELLER does mation of lender approval an appreisal is required YER'S request. BUYER s of this Agreement are bligated to complete the
accombance with HUD/FHA or VA requirements a written statemer Endorsement lender setting forth the appraised value of the property of required by FHA or VA.	nt by the Federal Housing Comm	issioner, Veterans Ad	ministration or a Direct
(D). ADDITIONAL FINANCIAL TERMS: ☑ Additional financial terms are specified under the heading "OTHEF ☐ Additional financial terms are contained in a FINANCING ADDEN Line E below is the total of the Purchase Price	IDUM of same date, attached here a minus Lines A, C, and D. Only	eto, signed by both part use numbers in these	lines.
847, DOD(E). APPROXIMATE FUNDS DUE FROM E to be paid by BUYER at closing in GOOD FUNDS, includes: cash, e of above loans being Assumed or taken "subject to", any net different shall be adjusted at closing of escrow in: Cash Other:	SUYERS AT CLOSING (Not in electronic transfer funds, certific	ncluding closing co ed check or cashier's	sts): Cash at closing check. NOTE: If any
JUYER'S Injiials () Date 17-21-27	SELLER'S Infl	lials ()() Date
This form's printed and distributed by the Idep Association of REALTORS®, Inc. This for National Association of REALTORS®, USE BY ANY OTHER PERSON IS PE-21 RESIDENTIAL PURCHASE AND SALE AGREEMENT PAGE 1 of 6 JULY, ZOOS EDITION			

	PAGE 2 OF 8 PAGES - RE-21 PURCHASE & SALES AGREEMENT
منيسين	PROPERTY ADDRESS: ST-Dheus Rangh 10# PS072607
	*
	5. OTHER TERMS AND/OR CONDITIONS: This Agreement is made subject to the following special terms, considerations and/or contingencies
	which must be satisfied prior to closing 6440 4 Sellers tonders Tands we are doing
	12 9 1031 exchange Also we doing simultaneous Clasings
	3 - Ch manage his top are applied a minimal ractions of the same o
	4 helpeen, Three Box Rauch Inc. 4 Mr. Rodge STEDhous and
	5 Then Detresen Theel Kon Komph. Int + Stepen Chammings
	6 OF THEMS INCLUDED & EXCLUDED IN THIS SALE: All existing fixtures and fittings that are attached to the property are INCLUDED IN THE
7	PURCHASE PRICE (unless excluded below), and shall be transferred free of flens. These include, but are not limited to, all attached floor coverings, attached
7	
В	
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8:	, , , , , , , , , , , , , , , , , , , ,
8: 84	, , , , , , , , , , , , , , , , , , , ,
8:	
86	(A). ADDITIONAL ITEMS SPECIFICALLY INCLUDED IN THIS SALE: 100 5 have 5 of Benning Ton.
87	
88	
28	
90 91	
92	
93	and I fems in The home That The Seller wishes TO Kep.
94	
95 95	7. TITLE CONVEYANCE: Title of SELLER is to be conveyed by warranty deed, unless otherwise provided, and is to be marketable and insurable except
97	for rights reserved in federal patents, state or ratinoad deeds, building or use restrictions, building and zoning regulations and ordinances of any governmental
98	unit, and rights of way and easements established or of record. Liens, encumbrances or defects to be discharged by SELLER may be paid out of purchase
99	money at date of closing. No liens, encumbrances or defects which are to be discharged or assumed by BUYER or to which title is taken subject to, exist
100	uniess otherwise specified in this Agreement.
101 102	9 TITLE INICIAE AND TO Them may be true of title in property or a place of the stage of the stag
103	8. TITLE INSURANCE: There may be types of title insurance coverages available other than those listed below and parties to this agreement are advised to talk to a title company about any other coverages available.
104	The state of the s
105	(A). TITLE COMMITMENT: Prior to closing the transaction, 🔯 SELLER or 🔲 BUYER shall furnish to BUYER a commitment of a title insurance policy
105	showing the condition of the title to said premises. BUYER shall havebusiness day(s) from receipt of the commitment or not fewer than twenty-four (24)
107	hours prior to closing, within which to object in writing to the condition of the title as set forth in the commitment. If BUYER does not so object, BUYER shall be
108	deemed to have accepted the conditions of the title. It is agreed that if the title of said premises is not marketable, or cannot be made so withinbusiness day(s) after notice containing a written statement of defect is delivered to SELLER, BUYER'S Earnest Money deposit will be returned to BUYER and SELLER
110	shall pay for the cost of title insurance cancellation fee, escrow and legal fees, if any.
111	A -1
112	(B). TITLE COMPANY: The parties agree that 10-Thern Title Company located at 10-Monitoring
173	shall provide the title policy and preliminary report of commitment.
114 115	(C). STANDARD COVERAGE OWNER'S POLICY; SELLER shall within a reasonable time after closing fumish to BUYER a title insurance policy in the
116	amount of the purchase price of the premises showing marketable and insurable title subject to the Itens, encumbrances and detects elsewhere set out in this
117	Agreement to be discharged or assumed by BUYER unless otherwise provided herein. The risk assumed by the fifte company in the standard coverage
118	policy is limited to matters of public record. BUYER shall receive a ILTA/ALTA Homeowner's Policy of Title Insurance. A title company, at BUYER's
119	request, can provide information about the availability, desirability, coverage and cost of various title insurance coverages and endorsements. If BUYER
120	desires title coverage other than that required by this paragraph, BUYER shall instruct Escrow Holder in writing and pay any increase in cost unless otherwise
121 122	provided herein.
123	(D). EXTENDED COVERAGE LENDER'S POLICY (Mortgagea policy): The lender may require that BUYER (Borrower) furnish an Extended Coverage
124	Lender's Policy. This extended coverage lender's policy considers matters of public record and additionally insures against certain matters not shown in the
125	public record. This extended coverage lender's policy is solely for the benefit of the lender and only protects the lender.
126	
127	9. MECHANIC'S LIERS - GENERAL CONTRACTOR DISCLOSURE STATEMENT NOTICE: BUYER and SELLER are hereby notified that,
-128	subject to Idaho Code §45-525 et seq., a "General Contractor" must provide a Disclosure Statement to a homeowner that describes certain rights
129 130	afforded to the homeowner (e.g. lien waivers, general liability insurance, extended policies of title insurance, surety bonds, and sub-contractor
131	information). The Disclosure Statement must be given to a homeowner prior to the General Contractor entering into any contract in an amount exceeding \$2,000 with a homeowner for construction, alteration, repair, or other improvements to real property, or with a residential real property purchaser for the
132	purchase and sale of newly constructed property. Such disclosure is the responsibility of the General Contractor and it is not the duty of your agent to
133	obtain this information on your behalf. You are advised to consult with any General Contractor subject to Idaho Code §45-525 et seq. regarding the
134	General Contractor Disclosure Statement.
	PINES and SIV 1 FO polyment
	BUVER'S initials Date 7 - 74 - 2 75ELLER'S Initials
	This form is printed and distributed the lifthy Association of REALTORSO, but This form has been designed for and it provided only for the by real actual probationals who are microbury of the National Association of REALTORSO, USK BY ANY OFFICE. PERSON IS PROBLETTED Copyright folian Association of REALTORSO, Inc. All rights reserved.
	RE-21 RESIDENTIAL PURCHASE AND SALE AGREEMENT PAGE 2 of 6 LULY 2001 EDITION
	Def NT Obj 1274

153	RE-21 RESIDENTIAL PURCHASE AND SALE AGREEMENT PAGE 3 of 6 JULY 2005 EDITION
154	PROPERTY ADDRESS: STEP here's Ranche 11- of Montae (14) 100 £5072607
155	
156	9. INSPECTION:
157	
1.58	have the right to conduct inspections, investigations, tests, surveys and other studies at BUYER'S expense. BUYER shall, within busines
159	day(s) of acceptance, complete these inspections and give to SELLER written notice of disapproved of items. BUYER is strongly advised to exercise
160	these rights and to make BUYER'S own selection of professionals with appropriate qualifications to conduct inspections of the entire property.
181	The second secon
162	(B), FHA INSPECTION REQUIREMENT, if applicable: "For Your Protection: Get a Home Inspection", HUD \$2564-CN must be signed on a
163	before execution of this agreement.
184	
155	(C). SATISFACTION/REMOVAL OF INSPECTION CONTINGENCIES: If BUYER does not within the strict time period specified give to SELLER written notice of disapproved of items, BUYER shall conclusively
166	be deemed to have: (a) completed all inspections, investigations, review of applicable documents and disclosures; (b) elected to proceed with the
167 168	transaction and (c) assumed all liability, responsibility and expense for repairs or corrections other than for Items which SELLER has otherwise agreed it
759	writing to repair or correct.
170	,
171	2). If BUYER does within the strict time period specified give to SELLER written notice of items disapproved of, BUYER shall provide to
172	SELLER pertinent section(s) of written inspection reports. SELLER shall havebusiness day(s) in which to respond in writing. The
173	SELLER, at their option, may comed the items as specified by the BUYERS in their letter or may elect not to do so.' If the SELLER agrees to correct the
174	items asked for in the BLYERS letter, then both parties agree that they will continue with the transaction and proceed to closing. This will remove the
175	BUYERS inspection confingency.
176	
177	 If the SELLER elects not to correct the disapproved items, or does not respond in writing within the strict time period specified, then the
178	BUYER(S) have the option of either continuing the transaction without the SELLER being responsible for correcting these deficiencies or giving the
179	SELLER written notice withinbusiness days that they will not continue with the transaction and will receive their Earnest Money back.
180	I I TO THE A SHARE A S
181	4). If BUYER does not give such written notice of cancellation within the strict time periods specified, BUYER shall conclusively be deemed
182 183	to have elected to proceed with the transaction without repairs or corrections other than for items which SELLER has otherwise agreed in writing to repair or correct. SELLER shall make the property available for all inspections. BUYER shall keep the property free and clear of liens; indemnity and
184	hold SELLER hamless from all liability, claims, demands, damages and costs; and repair any damages ansing from the inspections. No inspections
185	may be made by any governmental building or zoning inspector or government employee without the prior consent of SELLER unless required by local
186	law.
187	
188	to. LEAD PAINT DISCLOSURE: The subject property 💢 is 🗀 is not defined as "Target Housing" regarding lead-based paint or lead-based paint
189	hazards. If yes, BUYER hereby acknowledges the following: (a) BUYER has been provided an EPA approved lead-based paint hazard information
190	pamphiet, "Protect Your Family From Lead in Your Home", (b) receipt of Seller's Disclosure of Information and Acknowledgment Form and have been
191	provided with all records, test reports or other information, if any, related to the presence of lead-based paint hazards on said property, (c) that this
192	contract is contingent upon BUYERS right to have the property tested for lead-based paint hazards to be completed no later than
193	or the contingency will terminate, (d) that BUYER hereby Weives of does not waive this right, (e) that if test results show
194	unacceptable amounts of lead-based paint on the premises, BUYER has the right to cancel the contract subject to the option of the SELLER (to be given
195	in writing) to elect to remove the lead-based paint and correct the problem which must be accomplished before closing, (f) that if the contract is
196	canceled under this clause, BUYER'S earnest money deposit will be returned to BUYER.
t97 198	11. SQUARE FOOTAGE VERIFICATION: BLYER IS AWARE THAT ANY REFERENCE TO THE SQUARE FOOTAGE OF THE REAL PROPERTY OR
199	IMPROVEMENTS IS APPROXIMATE IF SQUARE FOOTAGE IS MATERIAL TO THE BUYER, IT MUST BE VERIFIED DURING THE INSPECTION PERIOD.
200	
201	12. SELLER'S PROPERTY DISCLOSURE FORM: If required by Title 55, Chapter 25 Idaho Code SELLER shall within ten (10) days after execution
202	of this Agreement provide to BUYER "SELLER'S Property Disclosure Form," or other acceptable form. BUYER has received the "SELLER'S Property
203	Disclosure Form" or other acceptable form prior to signing this Agreement: X Yes No NA
204	R = E
205	13. COVENANTS, CONDITIONS AND RESTRICTIONS, (CC& R'S): BUYER is responsible to obtain and review a copy of the CC& R'S (if
206	applicable). BUYER has reviewed CC& R's. Yes \(\sum \) No \(\text{N} \) N/A
207	
208	14. SUBDIVISION HOMEOWNER'S ASSOCIATION: BUYER is aware that membership in a Home Owner's Association may be required and
209	BUYER agrees to abide by the Articles of incorporation, By-Laws and rules and regulations of the Association. BUYER is further aware that the
210	Property may be subject to assessments levied by the Association described in full in the Declaration of Covenants, Conditions and Restrictions,
211	BUYER has reviewed Homeowner's Association Documents: Yes W No N/A Association fees/dues are \$
212	per BUYER SELLER N/A to pay Homeowner's Association SET UP FEE of \$ and/or property
213	TRANSFER FEES of \$at closing.
214	CO SEPTEMBER A THE PROPERTY OF
215 216	15. "NOT APPLICABLE DEFINED:" The letters "n/a," "n/a," "n.a.," and "N.A." as used herein are abbreviations of the term "not applicable." Where
218 217	this agreement uses the term "not applicable" or an abbreviation thereof, it shall be evidence that the parties have contemplated certain facts or conditions and have determined that such facts or conditions do not apply to the agreement or transaction herein.
	and the object of tenthings that such have in continuous to not apply to the agreement of transaction nersin.
218	72/107
	BUYER'S Initials ()() Date 7-26-07 SELLER'S Initials ()() Date
220 221	This form instituted and distributed by the Marko Association of REALTORSS, Inc. This form has been designed for and is provided only for use by real estate professionals who are members of the National Association of REALTORSS, USE BY ANY CITIES PERSON IS PROPHETIED, Copyright leids Association of REALTORSS, Inc. All rights reserved
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16. GOSTS PAID BY: Costs law or required by lender, or o SELLER agrees to pay up to \$	itherwise st	n to those I tated herein	n. The belo	w costs w	incurred by BUYER and SELLER unli- will be paid as indicated. Some costs order required repair costs only.	ess otherwit are subjec	se agr eed h t to loan pr	erein, or p ogram rec	orovideo Juiceme
BUYER or SELLER has the opt									
	BUYER	SELLER	Shared Equally	N/A		BUYER	SELLER	Shared Equality	N/A
Appraisal Fee				X	Title Ins. Standard Coverage Owner's Policy	·	X		
Appraisal Re-Inspection Fee				χ	Title Ins. Extended Coverage Lender's Policy – Mortgagee Policy	·			X
Closing Escrew Fee			X		Additional Title Coverage	·			〉
Lender Document Preparation Fee				X	Fuel in Tank - Amount to be Determined by Supplier				X
Tax Service Fee				χ	Well Inspection				改
Flood Certification/Tracking Fee			-	Х	Septic Inspections				نظل ا
Lender Required Inspections		' '		Х	Septic Prumping				4
Allomey Contract Preparation Fee				X	Survey				X.
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RE-21 RESIDENTIAL PURCHASE AND SALE AGREEMENT PAGE 4 of 8 JULY 2005 EDITION

27	A AM MAGATA
27	7 24. SINGULAR AND PLURAL terms each include the other, when appropriate.
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252 210	
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.200 291	
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293 294	The state of the s
295	A to the same and
.208	Broker on behalf of SELLER and BUYER related to the transaction, including, without limitation, the costs of life insurance, escouv fees, appraisal,
207 206	credit report fees, inspection fees and attorney's fees; and said holder shall pay any balance of the Esmest Money, one-half to SELLER and one-half to SELLER'S Broker, provided that the amount to be paid to SELLER'S Broker shall not exceed the Broker's agreed to commission. SELLER and BUYER
300	specifically acknowledge and agree that if SELLER elects to accept the Earnest Money as liquidated damages, such shall be SELLER'S sole and
30f	exclusive remedy, and such shall not be considered a penalty or forfeiture. If SELLER elects to proceed under (2), the holder of the Earnest Woney shall be entitled to pay the costs incurred by SELLER'S Broker on behalf of SELLER and BUYER related to the transaction, including, without limitation, the
303	costs of brokerage fee, title insurance, escrow fees, appraisal, credit report fees, inspection fees and altomey's fees, with any balance of the Earnest
304	Money to be held penning resolution of the matter.
305 306	If SELLER defaults, having approved said sale and fails to consummate the same as herein agreed, BLYER'S Earnest Money deposit shall be returned to him/her and SELLER shall pay for the costs of title insurance, escrew fees, appraisals, credit report fees, inspection fees, brokerage fees
307	and attorney's fees, if any. This shall not be considered as a waiver by BUYER of any other lawful right or remedy to which BUYER may be entitled.
309 309	29, EARNEST MONEY DISPUTE / INTERPLEADER: Notwithstanding any termination of this contract, BUYER and SELLER agree that in the event
310	of any continuersy regarding the Earnest Money and things of value held by Broker or closing agency, unless mutual written instructions are received by
311 212	the holder of the Earnest Monay and things of value, Broker or closing agency shall not be required to take any action but may await any proceeding, or at Broker's or closing agency's option and sole discretion, may interplead at parties and deposit any montes or triangs of value into a count of competent
313	junistiction and shall recover couri costs and reasonable attorney's less.
314	Sh MAN TERMODICAN A MANNA
315 316	30. COUNTERPARTS: This Agreement may be executed in counterparts. Executing an agreement in counterparts shall mean the signature of two Identical copies of the same agreement. Each identical copy of an agreement signed in counterparts is deemed to be an original, and all
317	identical copies shall together constitute one and the same instrument.
316 316	31. REPRESENTATION CONFIRMATION: Check one (1) box in Section 1 and one (1) box in section 2 below to confirm that in this transaction, the 319
320	brokerege(s) involved had the following relationship(s) with the BUYER(S) and SELLER(S).
321 322	Section 1:
323	A. The brokerage working with the BUVERIS) is soring as an AGENT for the SUVERIS).
324	B. The brokerage working with the BUYER(S) is acting as a LEETED DUAL ACENT for the BUYER(S), without on ASSIGNED ACENT.
325	C. The brokerage wariting with the BUYER(S) is acting as a LESTIED DUAL AGENT for the BUYER(S) and has an ASSNEWED AGENT
320	acting salely on bahali of the BiffElqS).
327	□ D. The brotherage working with the BUYER(S) is acting as a KOHAGENT for the BUYER(S).
329	DATERIAL C. A "Principle in the property and confidence and the confidence of the c
330	A Too brokerage working with the SELLENG) is esting as an ACENT for the SELLENG). B. The brokerage working with the SELLENG) is esting as a Livered Dilal ACENT for the SELLENG), without an ASSIGNED ACENT.
331	C. The brokenege working with the SELLERYS) is acting as a LEETED DUAL ACENT for the SELLERYS) and her an ASSHRIED AGENT
332	acting solely on behalf of the SELLER(S).
333	D. The brokerego working with the SELLER(S) is exting as a MCNASENT for the SELLER(S).
334 335	Each party signing this document confirms that he has received, read and understood the Agantay Disclosure Encourse adopted or approved by the Idaho read exists commission and
835	has consented to the relationarian communications. In addition, each party confirms that the brokestands apendy office policy was made available for inspection and review. EACH
337 338	PARTY UNDERSTANDS THAT HE IS A "CUSTOMER" AND IS NOT REPRESENTED BY A BROKERACE UNLESS THERE IS A SIGNED WRITTEN AGREEMENT FOR AGENCY REPRESENTATION.
335	
340	BUYSR'S Initials ()() Date 07-26-07 SELLER'S Initials ()() Date
341 342 `	They from it printed and distributed by the Make Articulation of REALTORSE, inc. This form has been designed for and is provided only for use by real estate professionals who are presented on the
343 344	NATIONAL ASSESSED OF REALTORS & USE BY ARY OTHER PRESENT PROFESSION OF PROFESSION ASSESSED ASSESSED FROM THE ART OTHER PROFESSION ASSESSED ASSESSED FOR ART OF THE AR

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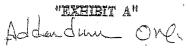
. 3	RE-21 RESIDENTIAL PURCHASE AND SALE AGREEMENT PAGE 6 OF JU	
	PROPERTY ADDRESS: STAD hans	Ranch 100 ESD72607
3	46 32. ENTIRE AGREEMENT: This Agreement contains	the entire Agreement of the parties respecting the matters herein set forth and supersedes all afters. No warranties, including, without limitation, any warranty of habitability, agreements or
	representations not expressly set forth herein shall be bind	
3	52 68 33. TIME IS OF THE ESSENCE IN THIS AGREEME 54	mi.
3	55 34. AUTHORITY OF SIGNATORY: If BUYER or SE	ELLER is a corporation, partnership, trust, estate, or other entity, the person executing this
	se agreement on its behalf warrants his or her authority to do	
35 35 36	in which property is located) 5.50 JA.M. (4) P.1	ne acceptance of SELLER on or before (Date) <u>July 26. D7</u> at (Local Time M. If SELLER does not accept this Agreement within the time specified, the entire Earnest
38 38		.
35 35	provide the control of the control o	(Specify number of BUYER addendum(s) attached.)
36	Sam Sam	
35 36	BUYER Signature	W BUYER (Print Name) STEEL & CUMPACHS
381 361		M. (Phone # Cell # 891 - 598 - 680 City AK State CF Zip 84002
370	Address	City AK State LF Zip 84000
371	E-Mall Address	Fax#
373 374		
375 376	BUYER Signature	the state of the s
377 378	and the same of th	/I. Phone # Cell#
379 380	· ·	City State Zip
381 382	E-Mail Address	
383		, 60, 60
384 385	37. SELLER'S SIGNATURES: On this date, INVe hereby approve and accept the trans	action set forth in the above Agreement and agree to carry out all the terms thereof on
385 387	the part of the SELLER.	
388 369	SIGNATURE(S) SUBJECT TO ATTACHED COUNTER C	
390 391 392	SIGNATURE(S) SUBJECT TO ATTACHED ADDENDUM	us = 1+2.
393	SELLER Signature	SELLER (Print Name)
395	DateTimeA.M. □ P.M	Phone # Cell#
398 397	Address	City State Zip
398 398	E-Mail Address	Fax#
400 401	鬼 医 色 表 自 日 多 年 多 年 多 日 日 日 日 日 日 日 日 日 日 日 日 日 日	医假口口肾多异素素素及肾炎等核素促进病毒炎多质素皮质炎后肠炎
402 403	SELLER Signature	A STATE OF THE STA
404		
405 408	DateTime	Phone # Cell#
407	Address	CityStateZip
40B	E-Mail Address	Fax #
410 411		
412 413	CONTRACTOR REGISTRATION # (if applicable)	•
414 415 415	REALTORSO U	m has been designed for and is provided only for uso by real estate professionals who are members of the National Association of SE BY ANY STREET PERSON IS PROPRIETED.
417 418	RE-21 RESIDENTIAL PURCHASE AND SALE AGREEMENT PAGE 6 of 6 JULY .	Association of REALTORS & Inc. All rights reserved 2005 EDITION
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BEGINNING AT THE SOUTHWEST CORNER OF THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF SECTION 21, TOWNSHIP 12 SOUTH, RANGE 44 EAST OF THE BOISE MERIDIAN, BEAR LAKE COUNTY, IDAHO, RUNNING THENCE NORTH 50 RODS; THENCE EAST 62.5 RODS; THENCE NORTH 80 RODS; THENCE EAST 257.5 RODS, THENCE SOUTH 80 RODS; THENCE WEST 2530 FEET; THENCE SOUTH 15° EAST 952 FEET; THENCE SOUTH 75° 30' WEST 218 FEET; THENCE NORTH 15° WEST 218 FEET; THENCE SOUTH 75° 30' WEST 2764 FEET; THENCE NORTH 164 FEET TO THE PLACE OF BEGINNING.

Commencing at a point 11,16 chains east from the northeast corner of the southeast quarter of section 21, township 12 south, range 44 east of the boise meridian, bear lare county, idaho, running thence east 1.90 chains; thence south 13° 45 east 8.87 chains; thence south 13° 45 east 4.63 chains; thence north 89° 55' west 13.66 chains; thence north 90° west 6.54 chains; thence north 75° east 52.50 chains to the place of beginning.

Beginning at the northwest corner of the southeast quarter of the southwest quarter of section 21, township 12 south, range 44 east of the boise meridian, bear lake county, idaho, running thence east 34,17 chains; thence south 76° 15' west 35.30 chains; thence north 9.12 chains, more or less, to the place of beginning.

Commencing at a point 25 rods, more or less, north and 11 rods, more or less, east of the southwest corner of the southwest quarter of section 21, township 12 south, range 44 rast of the boise meridian, bear lake county, idaho, running thence northeasterly 69 rods, more or less, to 40 acre line; thence north 99 rods, more or less, to 40 acre line; thence north along 40 acre line 27 rods; thence southwesterly 112 rods and 2 links to the land of george perkine; thence southwesterly along the line to the place of beginning.

Beginning at the south west corner of the south hast quarter of the northwest quarter of section 21, township 12 south, range 44 East of the boise meridian, bear laxe county, idaho, and running thence west 1239 EEET; thence south 34° west 175 FEET; thence south 35° 80' babt 1494 FEET; thence north 75° bast 3851 FEET, more or less, to the west line of U.S. Highway 30 north right of way; thence north 15° west along said eight of way 888 FEET; thence south 75° 30' west 318 FEET; thence north 15° west 218 FEET; thence south 75° 30' west 2764 FEET; thence north 164 FEET to the place of Beginning.

A PERPETUAL BASEMENT OR RIGHT OF WAY OVER A STRIP OF LAND 20 FEST IN WIDTE LEADING FROM THE COUNTY ROAD TO THE FOLLOWING DESCRIBED REAL PROPERTY:
THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF SECTION 23 IN TOWNSHIP 12 SOUTH OF RANGE 44 EAST OF THE BOISE MERIDIAN, BEAR LAKE COUNTY, IDAHO.
AND RUNNING THROUGH A FART OF THE SOUTHBAST QUARTER OF THE NORTHBAST QUARTER OF SECTION 21 AND THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 22,
TOWNSHIP 12 SOUTH OF RANGE 44 EAST OF THE BOISE MERIDIAN, SEAR LAKE COUNTY, IDAHO.

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RE-11 ADDENDUM JULY 2006 EDITION PAGE 1 OF 1

	RE-11 ADDEND	UM #	TWO	(1,2,3, etc.)	
REALTORE	Date: JW	<u>4 25.0°</u>	7		STEOMINATE
THIS IS A LEGALLY B	INDING CONTRACT. READ CONSULT YOU		CUMENT INCLUDING AI		DU HAVE ANY QUESTION
("Addendum" means tha	If to the Purchase and Sal the information below is ad vise the agreement (such as	ded material for th			means the form is being t
_	E AGREEMENT DATED	Suly	25.07	IE	# ES07260-
ADDRESS: STA	HD rens d	Janoh.		·	
	D D	ununings.	775.0		
SELLER(S): / h		inches-	ANC.		
i ne unoersigneo partie	s hereby agree as follows	,			
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2. CVDJ 70 have	DS TO STAN	The of Th	p home	For 2007. + Sheds a	Burrer L. Closting
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To the extent the terms of					
Addendums or Counter Addendums or Counter					
agreement is made an jo				s same. upon ns execu	mon by both parties,
		•		4	7/ ->
BUYER:				_ X _{Date:} ラ	-26-07
BUYER:				Date:	
SELLER:				uate:	
				Date:	

RE-11 ADDENDUM JULY, 2006 EDITION PAGE 1 OF 1

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ALTA Commitment (8/17/68)

ALTA Commitment Ferm

COMMITMENT FOR TITLE INSURANCE ISSUED BY



Stewart Tille Guaranty Company, a Texas Corporation (Company), for a valuable consideration, commits to leave its policy or policies of title insurance, as Identified in Sphedule A, in favor of the Proposed Incured named in Schedule A, as owner or mortgagee of the estate or interest in the land described or referred to in Schedule A, upon payment of the premiums and charges and compliance with the Requirements; all subject to the provisions of Schedules A and S and to the Conditions of this Commitment.

This Commitment shall be effective only when the identity of the Proposed Insured and the amount of the policy or policies committed for have been inserted in Schedule A by the Company.

All liability and obligation under this Commitment shall cause and terminate six months after the Effective Date or when the policy or policies committed for shall lesue, whichever first occurs, provided that the failure to issue the policy or policies is not the fault of the Company.

The Company will provide a sample of the policy form upon request.

This commitment shall not be valid or binding until countersigned by a validating diffeer or authorized signatory.

IN WITNESS WHEREOF, Stewart Title Guaranty Company has caused its corporate name and seal to be hereunte affixed by its duly authorized officers on the date shown in Schedule A.

The sand Company

Chalmen of the Beard

-Siewart

President

Countersigned

AUTHORIS COUNTRICES CO

Northern Title Co. of Idaho Company Name

Preston, ID City, State

004-UN ALTA Commitment (8/17/08)

FIII No.; NTBL-1189

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CONDITIONS

- 1. The term mortgage, when used herein, shall include deed of trust, trust deed, or other security instrument.
- 2. If the proposed insured has or acquired actual knowledge of any defeat, ilen, encumbrance, adverse claim or other matter affecting the setate or interest or mortgage thereon covered by this Commitment other than those shown in Schedule B hereof, and shall fall to disclose such knowledge to the Company in writing, the Company et all be relieved from liability for any loss or damage resulting from any act of reliance hereon to the extent the Company is prejudiced by failure to so disclose such knowledge. If the proposed insured shall disclose such knowledge to the Company, or if the Company otherwise acquires equal knowledge of any such defect, lian, encumbrance, adverse claim or other matter, the Company at its option may amend Schedule B of this Commitment accordingly, but such amendment shall not relieve the Company from liability previously incurred pursuant to paragraph 3 of these Conditions.
- 5. Liability of the Company under this Commitment shall be only to the named proposed insured and such parties included under the definition of Insured in the form of policy or policing committed for and only for actual loss incurred in reliance hereon in undertaking in good faith (a) to comply with the requirements inereof, or (b) to eliminate exceptions shown in Schedule B, or (c) to ecquire or create the estate or interest or merigage thereon covered by this Commitment. In no event shall such liability except the amount stated in Schedule A for the policy or policies committed for and such liability is subject to the insuring provisions and Conditions and the Exclusions from Coverage of the form of policy or policies committed for in favor of the proposed insured which are hereby incorporated by reference and are made a part of this Commitment except as expressly modified herein.
- 4. This Commitment is a contract to issue one or more title insurance policies and is not an abstract of title or a report of the condition of title. Any action or actions or rights of action that the proposed insured may have or may bring against the Company arising out of the status of the title to the estate or interest or the status of the mortgage thereon covered by this Commitment must be based on and are subject to the provisions of this Commitment.
- 5. The policy to be issued contains an arbitration clause. All griditable matters when the Amount of insurance is \$2,000,000 or less shall be arbitrated at the option of either the Company or the insured as the exclusive remedy of the parties. You may review a copy of the arbitration rules at \(\frac{\text{http://www.alta.org/>}. \)



All notices required to be given the Company and any statement in writing required to be furnished the Company shall be addressed to it at P.O. Box 2029, Houston, Taxas 77252.

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Fax: 2089470991

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Closing/Escrow inquiries to:
LORI THORNOCK,
ESCROW OFFICER
All inquiries regarding this report
should be directed to:
EARRARA BAIRD,
TITLE OFFICER

SCHEDULE A

Order No. NTBL-1183

- 1. Effective Date; May 30, 2007 @ 5:00 PM
- 2. Polley or policies to be issued;

A. ALTA Owner's (5/17/06)

Standard Coverage

Proposed Insured: THREE BAR RANCHES, INC.

Amount \$800,000.00 Premium: \$2,330.00

B. ALTA LORA (5/17/06)

Coverage

Proposed Insured;

Amount: \$0.00 Premium: \$0.00

C. Endorsements:

\$0.00

- The estate or interest in the land described in the Commitment and covered herein is: FRE SIMPLE
- 4. Title to the estate or interest referred to herein is at the effective date hereof vested in:

roger L. Stephens and Barbara L. Stephens, trustees of the roger L. and barbara L. Stephens ramily trust

5. The land referred to in this Commitment is in the State of IDAHO, County of BEAR LAKE and is described as follows:

See Attached Exhibit "A"

PROFERTY ADDRESS:

BEAR LAKE COUNTY

13/ 1B

07-28-07:02:59PM;

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"ETHIBIT A"

BEGINNING AT THE SOUTHWEST CORNER OF THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF SECTION 21, TOWNSHIP 12 SOUTH, RANGE 44 EAST OF THE BOISE MERIDIAN, BEAR LAKE COUNTY, IDAHO, RUNNING THENCE NORTH SO RODS; THENCE EAST 62.5 RODS; THENCE NORTH SO RODS; THENCE EAST 257.5 RODS, THENCE SOUTH SO RODS; THENCE WEST 2530 FEET; THENCE SOUTH 15° BAST 952 FEET; THENCE SOUTH 75° 30' WEST 2764 FEET; THENCE NORTH 164 FEET TO THE PLACE OF BEGINNING.

COMMENCING AT A POINT 11,16 CHAINS EAST FROM THE NORTHEAST CORNER OF THE SOUTHEAST QUARTER OF SECTION 21, TOWNSHIP 12 SOUTH, RANGE 44 EAST OF THE BOISE MERIDIAN, BEAR LAKE COUNTY, IDAHO, RUNNING THENCE EAST 2,90 CHAINS; THENCE SOUTH 13° 45' EAST 8,87 CHAINS; THENCE ROUTH 75° WEST 44,69 CHAINS; THENCE NORTH 89° 55' WEST 13,66 CHAINS; THENCE NORTH 30° WEST 6,54 CHAINS; THENCE NORTH 75° EAST 52,50 CHAINS TO THE PLACE OF BEGINNING.

BEGINNING AT THE NORTHWEST CORNER OF THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 21, TOWNSHIP 12 SOUTH, RANGE 44 BAST OF THE BOISE MERIDIAN, BEAR LAKE COUNTY, IDAHO, RUNNING THENCE BAST 34.17 CHAINS; THENCE SOUTH 76° 15' WEST 35.36 CHAINS; THENCE NORTH 9.12 CHAINS, MORE OR LESS, TO THE PLACE OF BEGINNING.

Commencing at a point 25 rods, more or less, north and 11 rods, more or less, east of the southwest coener of the southwest quarter of section 21, township 12 south, range 44 east of the Boise Meridian, bear lake county, idaho, running thence northeasterly 69 rods, more or less, to 40 acre line; thence north 59 rods, more or less, to 40 acre line; thence north along 40 acre line 27 rods; thence southwesterly 112 rods and 2 links to the land of george perkins; thence southwesterly along the line to the place of beginning.

Beginning at the southwest corner of the southeast quarter of the northwest quarter of section 21, township 12 south, range 44 east of the boise meridian, bear lake county, idaho, and running thence west 1239 ezet; thence south 34° west 175 feet; thence south 35° 30' bast 1494 feet; thence north 75° east 3851 feet, more or less, to the west line of U.S. Highway 30 north right of Way; thence north 15° west along said right of Way 888 feet; thence south 75° 30' west 318 feet; thence north 15° west 218 feet; thence south 75° 30' west 218 feet; thence south 75° 30' west 218 feet; thence south 75° 30' west 2784 feet; thence north 164 feet to the place of beginning.

A PERFETUAL EASEMENT OR RIGHT OF WAY OVER A STRIP OF LAND 20 FEET IN WIDTH LEADING FROM THE COUNTY ROAD TO THE FOLLOWING DESCRIBED REAL PROPERTY:

THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF SECTION 22 IN TOWNSHIP 12 SOUTH OF RANGE 44 EAST OF THE BOISE MERIDIAN, BEAR LAKE COUNTY, IDAHO.

AND RUNNING THROUGH A PART OF THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 21 AND THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 22,

TOWNSHIP 12 SOUTH OF RANGE 44 EAST OF THE BOISE MERIDIAN, SEAR LAKE COUNTY, IDAHO.

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SCHEDULE B - SECTION II

Order No. NTBL-1183

Echedule B of the policy or policies to be issued will contain exceptions to the following matters unless the same are disposed of to the satisfaction of the Company.

A. Defects, flors, encumbrances, adverse claims or other matters, if any, created, first appearing in the public records, or attaching subsequent to the effective date hereof but prior to the date the proposed insured acquires of record for value the estate or interest or more sage thereon covered by this Commitment.

B. General Exceptions:

- (1) Takes or assessments which are not shown as existing liens by the records of any texing authority that levies saxes or assessments on real property or by the public records.
- Any facts, rights, interest, or claims which are not shown by the public records but which could be ascertained by an inspection of said land or by making inquity of persons in possession thereof.*
- Easements, claims of easement or enounderances which are not shown by the public records.*
- (3) (4) Any encroscionent, encumbrance, violation, variation, or adverse circumstance affecting the fitte including discrepancies, conflicts in boundary lines, chortage in erra, or any other finds that would be disclosed by an accurate and complete land survey of the land, and that are not shown in the public records.*
- (a) Unpetented mining claims; (b) reservations or exceptions in patents or in Acis southerlaing the (5) lesuance thereof, (c) water rights, claims or title to water, whether or not the matters excepted under (a), (b), or (c) are shown by the public records.*
- (E) Any liens, or rights to a lien, for services, labor or meserial thereinfors or hereafter furnished, imposed by law and not shown by public records, a

Peregraphs 1, 2, 3, 4, 5, and 6 will not appear as printed exceptions on extended coverage policies, except as to such parts thereof which may be typed as a Special Exception in Schedule B. Section II.

(See Special exceptions beginning on the next page)

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SCHEDULE B - SECTION II

Order No. NTBL-1183

SPECIAL EXCEPTIONS:

Taxes for the year 2007 are a lien, not yet due or payable.
 Taxes for the year 2006 have been paid in the amount of \$183.54.
 Tax Sprint No. 3166

Taxes for the year 2006 have been paid in the amount of \$1,134.00. Tax Serial No. 3167

Taxes for the year 2007 are a lien, not yet due or payable.
Taxes for the year 2006 have been paid in the amount of \$195.10.
Tax Serial No. 3168

- Said property is included within the taxing easessment district of BEAR LAKE COUNTY and may be subject to the charges
 and assessments thereof. (Charges are current according to the information available from the county records.)
- 3. Rights of way for any roads, ditches, lences, canals, or transmission lines now existing over, under or scross said property.
- 4. All easements and right of ways along easterly line of said parcel for roads and utilities.
- Mineral rights, claims or title to minerals in or under the land, including but not limited to metals, oil, gas, coal, or other
 hydrocarbons, sand, gravel or atoms, and sessitions or other rights relating thereta, whether express or implied, recorded or
 unseconded.
- 6. Deed to state of Idaho for U.S. Highway 30

RECORDED:

MAY 22, 1956

INSTRUMENT NO.

71.884

RECORDED:

AUGUST 1, 1956

INSTRUMENT NO:

72172

RECORDED:

SEPTEMBER 20, 1956

INSTRUMENT NO.:

72343

RECORDED:

NOVEMBER 15, 1960

INSTRUMENT NO.:

79310

(Continued)

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Order No. NTBL-1183

SPECIAL EXCEPTIONS CONTINUED

7. An Essement for the purpose shown below and rights incidental therein as set forth in a document

Granted to:

UTAH POWER AND LIGHT COMPANY

Purpose: ' Dated:

· Public Utilities Essement

Recorded:

SEPTEMBER 5, 1957

Bitty No.:

FEBRUARY 28, 1958 74487 & 74488

8. RIGHT OF WAY OFTION

RECORDED:

AUGUST 21, 1973

INSTRUMENT NO.

.9. OIL AND GAS LEASE

RECORDED:

FEBRUARY 11, 1975

INSTRUMENT NO.:

107445

101374

Correction of description in oil and gas lease

RECORDED:

JULY 9, 1976

INSTRUMENT NO.:

108991

Assignment of overriding royalty interest

RECORDED: INSTRUMENT NO.: JUNE 24, 1977 112523

ASSIGNMENT OF OIL AND GAS LEASES

RECORDED:

JULY 15, 1977

INSTRUMENT NO.: 112668

CORRECTION OF DESCRIPTION IN OIL AND GAS LEASE

RECORDED: DECEMBER 9, 1977 INSTRUMENT NO.: 113901

ASSIGNMENT OF OVERSIDING ROYALTY INTEREST

RECORDED:

DECEMBER 28, 1977

INSTRUMENT NO .:

114109

PARTIAL ASSIGNMENT OF OIL AND GAS LEASE

RECORDED!

AUGUST 13, 1980

INSTRUMENT NO.:

122412

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SCHEDULE B-SECTION II

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Order No. NTBL-1183

SPECIAL EXCEPTIONS CONTINUED:

RENTAL DIVISION ORDER AND DESIGNATION OF DEPOSITORY

RECORDED:

MARCH \$1, 1981

INSTRUMENT NO .:

124283

assignment of oil and gas lease

RECORDED:

MARCH 31, 1981

INSTRUMENT NO .:

124254

10. RIGHT OF WAY BASEMENT

RECORDED:

MAY 26, 1914

INSTRLIMENT NO.

10835, 10836, 10837 & 10838

11. OFFICIAL MINUTES

· RECORDED:

MARCH 7, 1997

INSTRUMENT NO.:

166238

NOTE: The policy of title businesses will isolade an arbitration provision. The company or the insured may demand arbitration. Arbitrable matters may include, but are not limited to, any controversy or claim between the Company and the insured existing out of or relating to this policy, any service of the Company in commention with its issuance of the breach of a policy provision or other obligation. Please ask your escrew or title officer for a sample copy of the policy to be issued if you with to review the arbitration provisions and any other provisions pertaining to your Title Insurance coverage.

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NOTE: Judgments were checked on the following names, and none were found of record:

THREE BAR RANCHES, INC. ROGER L; STEPHENS and BARBARA L, STEPHENS

NOTE: In the event this transaction falls to close, a cancellation fee may be charged for services rendered in accordance with the rates that are on file with the Commissioner of Insurance of the State of Idaho.

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NTBL-1183

COMMITMENT FOR TITLE INSURANCE

SCHEDULE B-SECTION 1 REQUIREMENTS

THE FOLLOWING ARE THE REQUIREMENTS TO BE COMPLIED WITH

- (a) Payment to or for the account of the grantors or mortgagors of the full consideration for the estate or interest to insured.
- (b) Documents satisfactory to us creating the interest in the land and/or the mortgage to be insured must be signed, delivered and recorded.
- (c) The Company hereby reserves the right to add additional special exceptions to coverage and/or requirements for the issuance of any policy pursuant to this commitment upon its receipt and review of additional information including, but not limited to, any Items herein below.

In addition to the foregoing, the following requirements must be complied with, to-wit:

- 1. PURCHASE AND SALE AGREEMENT.
- 2. We require copies of the Trust Agreement for ROGER L. AND BARBARA L. STEPHENS FAMILY TRUST.
- 3. We require copies of the Articles of Corporation for THREE BAR RANCHES, INC.
- 4. Deed conveying title to the purchasers, executed by: ROGER L. STEPHENS and BARBARA L. STEPHENS, TRUSTEES OF THE ROGER L. AND BARBARA L. STEPHENS FAMILY TRUST.
- 5. THREE BAR RANCHES, INC. NEEDS TO BENEW ARTICLES OF INCORPORATION WITH THE STATE OF UTAH.

EXHIBIT "D"

Not WIT 8,61

Brad H. Bearnson (I.S.B. 7086)
Aaron K. Bergman (I.S.B. 8878)
BEARNSON & CALDWELL, LLC
399 North Main, Suite 270
Logan, Utah 84321
Telephone: (435) 752-6300
Facsimile: (435) 752-6301
bbearnson@bearnsonlaw.com
abergman@bearnsonlaw.com

Attorneys for Defendant Northern Title

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BEAR LAKE

STEVEN CUMMINGS, an individual residing in Montana,)
Plaintiff,) Case No. CV-09-183
vs.	SECOND AFFIDAVIT OF LORI THORNOCK
ROGER L. STEPHENS, an individual residing in Providence, Utah, JOHN DOES I-X.	
Defendants.	
STATE OF IDAHO)	
County of Bear Lake)	

LORI THORNOCK, being first duly sworn on oath, deposes and states as follows:

- 1. I am a United States citizen. I am over 21 years of age and competent to testify regarding the facts and matters stated herein, which are based on my personal knowledge.
- 2. I have personal knowledge of the real estate transaction between Roger L. Stephens and Steven Cummings, subject of this action, and the matters stated herein.

SECOND AFFIDAVIT OF LORI THORNOCK - Page 1 Case No. CV-09-183

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- 3. I am currently an employee of Northern Title Company of Idaho, Inc. ("Northern Title) and have been employed there since July 27, 2006. During that time I acted as the office manager of the Montpelier, Idaho office of Northern Title.
- 4. On or about July 31, 2007, Northern Title issued the initial title commitment on the Roger Stephens' property for sale. A few days later, a revised title commitment was issued.

 However, these preliminary title commitments were not intended for Mr. Cummings. Rather, each specifically named the proposed insured: "THREE BAR RANCHES, INC."
- 5. Additionally, at no time has Northern Title agreed to act as an abstractor of title for Mr. Cummings. Rather, Northern Title agreed to insure certain property and to act as escrow holder for purpose of payments and document handling.
- When Roger Stephens contacted me on or about November 8, 2007, I was very surprised to hear that the warranty deed erroneously included property on the east of Highway 30.
- 7. In the course of the transaction, Northern Title's contact was limited to the realtors, Dorothy Julian and Evan Skinner. I have not yet been introduced to Mr. Cummings. Both Ms. Julian and Mr. Skinner indicated that Mr. Stephens intended only to sell property west of Highway 30. This was my understanding from the very beginning.
- 8. The reason for re-recording the existing warranty deed was not to change the transaction between Mr. Stephens and Mr. Cummings, but to conform the warranty deed to what I always understood to be the intent of the Real Estate Purchase Contract.
- When I re-recorded the deed, I was acting according to my express duties as escrow holder. Northern Title was designated as the closing agent, and held certain

SECOND AFFIDAVIT OF LORI THORNOCK - Page 2 Case No. CV-09-183

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responsibilities as such. One of those duties included the making of clerical corrections to ensure that the warranty deed conformed to the intent of the Real Estate Purchase Contract.

10. In conjunction with the above understanding, it was always Northern Title's intent to include in the legal description and thereafter insure Cummings only for property lying west of Highway 30. This was clear to me through my discussions with the realtors, previous attempts to correct clerical errors in title commitments issued to Three Bar Ranches, Inc. and through my evaluation of the plat maps.

11. At the time of the re-recording, Northern Title had not issued Mr. Cummings any title insurance policy. The reason is that Cummings initially indicated he wanted the deed transferred into trust. It was therefore initially uncertain who would be the insured. Once it was understood that no trust would be utilized, Northern Title issued Mr. Cummings an Owner's Policy of Title Insurance, dated April 9, 2008.

FURTHER SAITH AFFLANT NAUGHT.

Dated this 24 day of May, 2012.

LORI THORNOCK

SUBSCRIBED AND SWORN TO before menthis 24 day of May, 2012.

SEALS ATARY

PUBLIC OF CAMILLIAND ATE OF CAMILLIAND MINIMUM MI

JOYARY PUBLIC FOR IDAHO

Residing at: MONHOOKER

My Commission Expires: 3-18-2016

SECOND AFFIDAVIT OF LORI THORNOCK - Page 3 Case No. CV-09-183

EXHIBIT "E"

Tof NT Obi

Randall C. Budge (ISB No. 1949)
Mark S. Shaffer (ISB No. 7559)
RACINE, OLSON, NYE, BUDGE &
BAILEY, CHARTERED
P.O. Box 1391; 201 E. Center Street
Pocatello, Idaho 83204-1391
Telephone: 208-232-6101
Facsimile: 208-232-6109

Attorneys for Defendant

rcb@racinelaw.net

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BEAR LAKE

STEVEN CUMMINGS, an residing in Montana,	individual)
Plaintiff,) Case No. CV-09-183
VS.) AFFIDAVIT OF EVAN SKINNER
ROGER L. STEPHENS, an residing in Providence, Utah I-X.)))
Defendants.)) _)
STATE OF IDAHO) ; ss.	
County of Bear Lake)	

EVAN SKINNER, being first duly sworn on oath, deposes and states as follows:

1. I am a United States citizen. I am over 21 years of age and competent to testify regarding the facts and matters stated herein, which are based on my personal knowledge.

AFFIDAVIT OF EVAN SKINNER - Page 1

Just VII Up!

- 2. I am currently a real estate agent with RE/MAX in Montpelier, Idaho. As a real estate agent, I hold myself out to the public as an "Idaho-Utah-Wyoming Farm and Ranch Specialist".
- 3. I have sold ranches in the Bear Lake Valley for 14 years and am very familiar with the various ranches located in the Bear Lake Valley. I am not guessing when I tell clients information about boundaries.
 - 4. In July of 2007 I was working as a real estate agent for Exit Realty of Bear Lake.
- 5. In July of 2007 I was asked by Dorothy Julian-Ralls, then a real estate agent for Exit Realty of Bear Lake, to help her show Steven Cummings some properties in Montpelier, Idaho and the surrounding areas.
- 6. At approximately the end of July 2007 I showed Steven Cummings several properties in Montpelier and the surrounding areas. Steven Cummings drove his motor home and followed my vehicle as we viewed each property.
- 7. One of the properties I showed Steven Cummings was the Roger Stephens ranch property on the west side of Highway 30 located north of Montpelier ("Stephens Property"). To get to the Stephens Property I drove on North 8th Street, which is west of Highway 30. I showed Mr. Cummings where the Stephens Property started from North 8th Street and we then went to the main residence located on the Stephens Property.
- 8. While at the Stephens Property I explained to Steven Cummings that the Stephens Property was under contract, but that the buyer, Three Bar Ranches, Inc. ("Three Bar Ranches") may be willing to sell its position if it could make more than what it was going to have to pay for the Stephens Property. I also told Steven Cummings that the Stephens Property was approximately 270

AFFIDAVIT OF EVAN SKINNER - Page 2

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acres, but that the acreage I told him was only an estimate and we received our information from the Bear Lake County records. I also explained to Steven Cummings that the Stephens Property had not been surveyed, and that the Stephens Property had been part of a larger tract of land but that the property located on the east side of Highway 30 was not part of the sale.

- 9. I explained to Steven Cummings that if he decided to purchase the Stephens Property we would need to have Three Bar Ranches assign its interest over to Steven Cummings as the second buyer.
- 10. After I showed Steven Cummings the Stephens Property, I spoke to Curtis Baum, a representative of Three Bar Ranches, and he agreed to sell Three Bar Ranches' interest in the purchase of the Stephens Property for a profit of approximately \$50,000.00.
- 11. I gave Steven Cummings a copy of the Purchase and Sale Agreement that was entered into between Three Bar Ranches and Roger and Barbara Stephens.
- 12. I told Steven Cummings several times prior to his purchase of the Stephens Property that the portion of the Stephens Property for sale was only the land on the west side of Highway 30.
- 13. I personally showed Steven Cummings both in person and on a map that the Stephens Property that was for sale consisted of approximately 270 acres and was only the land on the west side of Highway 30.
- 14. I, on behalf of Exit Realty of Bear Lake, provided Steven Cummings with a Buyer Due Diligence Checklist, which Steven Cummings initialed and signed on July 26, 2007. A true and correct copy of the Buyer Due Diligence Checklist is attached hereto as Exhibit "1", incorporated herein by reference as if set forth fully.

AFFIDAVIT OF EVAN SKINNER - Page 3

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- 15. The Buyer Due Diligence Checklist signed by Steven Cummings specifically states that "[i]f the square footage or acreage of the Property is of material concern to buyer, buyer is advised to verify the square footage or acreage through any independent sources or means deemed appropriate by Buyer. . . . Buyer is advised not to rely on seller, the Company, or any agents of the Company for a determination regarding the square footage or acreage of the Property." Ex. "1", section 9.
- 16. It is my opinion that Steven Cummings's purchase of the approximately 270 acres of the Stephens Property was an excellent buy. In fact, I still had people looking to purchase property at the price Steven Cummings paid for the Stephens Property over a year after Steven Cummings's purchase of the Stephens Property, even when the real estate market in the Bear Lake Valley had become substantially depressed as a result of the recent downturn in the economy. FURTHER SAITH AFFIANT NAUGHT.

Dated this 23 day of February 19, 2010.

EVANSKINNER

SUBSCRIBED AND SWORN TO before me this 23 day of February, 2010.

(SEAL)



NOTARY PUBLIC FOR MAHO

Residing at: Montpelier, ID

My Commission Expires: 10-31-2012

AFFIDAVIT OF EVAN SKINNER - Page 4

Def NT Obi

EXHIBIT "F"

Randall C. Budge (ISB No. 1949)
Mark S. Shaffer (ISB No. 7559)
RACINE, OLSON, NYE, BUDGE &
BAILEY, CHARTERED
P.O. Box 1391; 201 E. Center Street
Pocatello, Idaho 83204-1391
Telephone: 208-232-6101
Facsimile: 208-232-6109
rcb@racinelaw.net

Brad H. Bearnson Bearnson & Peck, L.C. 399 North Main, Ste 300 Logan, Utah 84321

Attorneys for Defendant

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BEAR LAKE

STEVEN CUMMINGS, an residing in Montana, Plaintiff,	individual)))	Case No. CV-09-183
Vs.)	AFFIDAVIT OF DOROTHY JULIAN
ROGER L. STEPHENS, an residing in Providence, Utah I-X.)))	
Defendants.)	
STATE OF IDAHO) ; ss.		- -
County of Ada)		

DOROTHY JULIAN, being first duly sworn on oath, deposes and states as follows:

AFFIDAVIT OF DOROTHY JULIAN - Page 1

TREF NT Obi

- 1. I am a United States citizen. I am over 21 years of age and competent to testify regarding the facts and matters stated herein, which are based on my personal knowledge.
 - 2. In 2007 I was a real estate agent for Exit Realty of Bear Lake.
- 3. In 2007 I was the listing agent of the Roger L. and Barbara L. Stephens Family Trust property located on the west side of Highway 30 north of Montpelier ("Stephens Property").
- 4. As the listing agent of the Stephens Property, I worked with Roger L. Stephens to determine what property the Roger L. and Barbara L. Stephens Family Trust desired to sell. Roger L. Stephens informed me that the Roger L. and Barbara L. Stephens Family Trust owned property located both east and west of Highway 30. I was instructed by Roger L. Stephens that the Stephens Property for sale was to include only the property located west of Highway 30.
- 5. On or about July 31, 2007, I received a copy of the Commitment for Title Insurance on the Stephens Property, referenced as Order No. NTBL-1183 ("Title Commitment"), from Northern Title Company of Idaho ("Northern Title"). The Title Commitment contained a plat map with arrows indicating that the property involved included only real property located west of Highway 30. A true and correct copy of the Title Commitment is attached hereto as Exhibit "1" and incorporated herein by reference.
- 6. Shortly after receiving the Title Commitment, I contacted Northern Title to confirm that the Title Commitment (and thus the property for sale by the Stephens Family Trust) only included property located west of Highway 30. Northern Title verbally confirmed to me that the Title Commitment only included property located west of Highway 30.
- 7. Sometime after that but before the August 3, 2007 closing, I received a second copy of the Commitment for Title Insurance on the Stephens Property, referenced as Order No. NTBL-

AFFIDAVIT OF DOROTHY JULIAN - Page 2

THE NT Obj

1183 ("Second Title Commitment"), from Northern Title. The Second Title Commitment contained a plat map with arrows indicating that the property involved included only real property located west of Highway 30. A true and correct copy of the Second Title Commitment is attached hereto as Exhibit "2" and incorporated herein by reference.

- 8. As the listing agent for the Stephens Property, I had my phone number listed on the sales sign. At approximately the end of July 2007, I received a phone call from Steven Cummings, who had been driving around the area and saw the sign by the residence located on the Stephens Property.
- 9. I indicated to Stephen Cummings that the Roger L. and Barbara L. Stephens Family Trust owned properties located both east and west of Highway 30, that Highway 30 split the land owned by the Roger L. and Barbara L. Stephens Family Trust, and that only the land located to the west of Highway 30 was for sale.
- 10. I indicated to Steven Cummings that the property surrounding the residence to the west of Highway 30 was approximately 278 acres. I also indicated to Steven Cummings that the property for sale located west of Highway 30 included the residence, all barns and sheds, 900 water shares of Bennington gravity flow water, and 100 water shares of Montpelier water.
- I also told Steven Cummings that the purchase price of the Stephens Property had been reduced to \$800,000, that the property was currently under lease by the Phelps brothers from Bennington, and that there was currently an offer on the Stephens Property but that anyone with any interest should consider a backup offer.
- 12. I then met Steven Cummings at the office of Exit Realty of Bear Lake and again drove him to the Stephens Property. While at the Stephens Property, I showed Steven Cummings the

AFFIDAVIT OF DOROTHY JULIAN - Page 3

THE NT Obi

residence located on the Stephens Property and emphasized that no property on the east of Highway 30 was included in the sale of the Stephens Property.

- 13. After showing Steven Cummings the Stephens Property, I drove Steven Cummings back to the office of Exit Realty of Bear Lake and we met with Evan Skinner (another real estate agent at Exit Realty of Bear Lake). I then accompanied Evan Skinner in his truck as he drove Steven Cummings around the Stephens Property and showed Steven Cummings the areas of the Stephens Property that were not accessible using my car. During this visit Evan Skinner and I emphasized to Steven Cummings, both verbally and with the use of a map, that the Stephens Property for sale was located only on the west side of Highway 30.
- As the listing agent of the Stephens Property, I gave each potential buyer of the Stephens Property certain documentation describing the specifics of the Stephens Property. The documentation included a copy of a map from the USDA Farm Service Agency displaying the land for sale (all on the west side of Highway 30). A true and correct copy of the map from the USDA Farm Service Agency is attached hereto as Exhibit "3" and incorporated herein by reference. I gave Steven Cummings a copy of the map from the USDA Farm Service Agency and again indicated to Steven Cummings that the Stephens Property for sale was all located west of Highway 30.

Dated this <u>26</u> day of September, 2010.

DOROTHY JUL

AFFIDAVIT OF DOROTHY JULIAN - Page 4

Def NT Obj

SUBSCRIBED AND SWORN TO before me this $\frac{20}{20}$ day of September, 2010.

THOMAS C JORGENSEN
Hotary Public
State of Idaho

VOTARY PUBLIC FOR DAHO

Residing at: 1/8/13201
My Commission Expires:

AFFIDAVIT OF DOROTHY JULIAN - Page 5

Dof NT Obi

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 21 day of September, 2010, I served a true and complete copy of the foregoing document on the following persons in the manner indicated:

Nathan M. Olsen Beard, St. Clair, Gaffney PA 2105 Coronado Street		U.S. Mail/Postage Prepaid Hand Delivery
	LJ	Overnight Mail
Idaho Falls, Idaho 83404-7495		Fax
Brad H. Bearnson	ſÁ	U.S. Mail/Postage Prepaid
Bearnson & Peck, L.C.	, L	Hand Delivery
399 North Main, Ste 300		Overnight Mail
Logan, Utah 84321		Fax

RANDALL C PRIDGE

EXHIBIT "G"

Def NT Obj



ESCROW GENERAL PROVISIONS

This agreement governs the duties and obligations between Northern Title Company of Idaho (hereinafter "Escrow Agent") and the undersigned signatories, who are parties to the following transaction.

Order No.: NTBL-1183

Address: MONTEPLIER, ID

Buyer(s): STEVEN B. CUMMINGS,

Seller(s): ROGER L. STEPHENS TRUSTEE and BARBARA L. STEPHENS TRUSTEE TRUST

The Parties understand and acknowledge:

1. Escrow Agents Role

Subject to the terms of this agreement, Escrow Agent agrees to act as an escrow agent in closing the transaction described above. Escrow Agent is not the agent of any single party. Rather, Escrow Agent agrees to prepare documents, secure the execution of documents, record documents, disburse funds, and otherwise close the transaction in the accordance with the joint directions of the parties. Escrow Agent has no other duties or obligations. In particular, Escrow Agent does not give and has no duty to give legal or other advice to the parties.

2. Parties' Role

The parties authorize Escrow Agent to close the transaction, record documents, disburse funds, and otherwise act in accordance with the written Settlement Statement and any written or oral directions or agreements given to Escrow Agent by the parties or their representatives. The parties agree that Escrow Agent is entitled to act on the direction of the realtor, attorney or other person who has dealt with Escrow Agent on behalf of them in this transaction. If any party wishes to limit the authority of those who have dealt on their behalf with Escrow Agent, any such limitation must be contained in a writing that is delivered to Escrow Agents. The parties agree that they are not looking to Escrow Agent for legal or other advice, and that they had an opportunity to obtain such advice from persons other than those affiliated with Escrow Agent.

3. Closing Documents

The parties have been given an opportunity to review all documents at closing and to seek independent advice or counsel concerning those documents, if desired. The parties agree that the only representations of Escrow Agent upon which they are entitled to rely or act are those that are in writing and executed by Escrow Agent and that the parties are not entitled to act or rely on conflicting oral or written terms or directions given to Escrow Agent prior to closing. The parties' execution and delivery of documents at closing shall, as between Escrow Agent and the parties, constitute the parties' agreements and directions to Escrow Agent whether or not Escrow Agent is a party to the documents. The terms of this paragraph shall not affect the parties' rights between themselves.

4. Deposit of Funds, Recording & Disbursements

The undersigned BUYER and SELLER hereby approve the foregoing statement and authorize NORTHERN TITLE COMPANY OF IDAHO to complete the transaction in accordance herewith. The instruments may be delivered or recorded and funds disbursed. Escrow Agent shall place all funds received in escrow into a federally insured depository account specifically designated as a trust account. Escrow Agent may maintain a general trust account and individual accounts for specific escrows, subject to any specific terms and conditions of any written agreement between Buyer, Seller, and Escrow Agent. Absent specific written direction from both Seller and Buyer, Escrow Agent shall, as agent for Buyer and Seller, determine the identity of the depository institution. Escrow Agent shall not be responsible for any loss of funds occurring as a result of failure of the institution in which funds have been deposited, so long as Escrow Agent complies with the foregoing provisions relating to the type of depository institutions and accounts to be used. Earnings on funds held in Escrow Agent's escrow trust account shall be owned by and periodically disbursed to Escrow Agent as additional consideration for services actually performed by Escrow Agent. Funds may be paid from trust accounts only in accordance with the terms and conditions of Buyer's and Seller's instructions to Escrow Agent. In the event that Escrow Agent initiates or is joined as a party to any litigation relating to this escrow, Buver and Seller jointly and severally agree to pay all costs, expenses and attorney's fees incurred by Escrow Agent in such litigation. Escrow Agent shall be entitled, at it's option, to be paid such costs, expenses and the attorney's fees from the funds deposited by the party(ies) with Escrow Agent.





5. Disclosure of Possible Benefits to Escrow Agent

As a result of Escrow Agent maintaining it's general escrow accounts with the depositories, Escrow Agent may receive certain financial benefits such as an array of bank services, accommodations, loans or other business transactions from depositories ("collateral benefits"). All collateral benefits shall accrue to the sole benefit of Escrow Agent and Escrow Agent shall have obligation to account to the parties to this escrow for the value of any such collateral benefits.

6. Miscellaneous Fees

The Settlement Statement may prescribe that certain release or reconveyance fees are payable to Escrow Agent. These fees are payable to Escrow Agent to compensate it for facilitating and arranging for the reconveyance or release of the encumbrance in question and are payable in the amounts indicated irrespective of whether additional reconveyance fees or charges may have been paid or are payable to any other party and irrespective of any limitation on reconveyance or release fees that may be prescribed. Escrow Agent may incur certain additional costs of behalf of the parties for services performed by third party providers. The fees charged by Escrow Agent for such services may include a mark up over the direct cost of such services to reflect the averaging of direct, administrative and overhead charges of Escrow Agent for such services.

7. Prorations & Adjustments

The term "close of escrow" means the date on which documents are recorded. All pro-rations and/or adjustments shall be made as of the close of escrow based on a 30-day month, unless otherwise instructed in writing.

8. Contingency Periods

1Escrow Agent shall not be responsible for monitoring contingency time periods between the parties. The parties shall execute such documents as may be requested by Escrow Agent to confirm the status of any such periods.

9. Reports

As an accommodation, Escrow Agent may agree to transmit orders for inspection, termite, disclosure and other reports if requested, in writing or orally, by the parties or their agents. Escrow Agent shall deliver copies of any such reports as directed. Escrow Agent is not responsible for reviewing such reports or advising the parties of the content of same.

10. Information from Affiliated Companies

Escrow Agent may provide the parties' information to and from it's affiliates in connection with the offering of products and services from these affiliates.

11. Commitment for Title Insurance; Recordation of Documents

The undersigned Buyer hereby acknowledges receipt of a copy of, and an opportunity to review, Commitment for Title Insurance referenced as Order No. NTBL-1183 (the "Commitment") obtained through Escrow Agent in the contemplation of the above transaction, and authorizes the title insurer to issue the policy of title insurance contemplated thereby, which policy shall contain the following numbered exceptions from coverage: 1-11; as shown on the Commitment in addition to any new encumbrances created in connection with this transaction. The undersigned Buyer and Seller affirm that the legal description appearing in the commitment is satisfactory, and authorize Escrow Agent to record documents delivered through escrow which contain said legal description(s) necessary or proper for the issuance of the requested title insurance policy(ies).

12. Personal Property Taxes

No examination, UCC search, insurance as to personal property and/or the payment of personal property taxes is required unless otherwise instructed in writing.

13. Real Property Taxes

The undersigned Buyer and Seller do hereby understand and agree that the proration for general property taxes as provided in the above referenced closing statements, was calculated by utilizing the general property taxes assessed for the year 2006. Accordingly, the Buyer(s) and Seller(s) do hereby hold Escrow Agent free and harmless from any liability or damages caused by an inaccurate proration for general property taxes assessed for the current year. Upon a determination of the assessed property taxes due for the current year, Buyer(s) and Seller(s) agree to make the proper proration adjustment as may required subsequent to closing.



P. 03

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14. Survey

The undersigned buyers and sellers hereby acknowledge that they have (chosen to/ chosen not to) have a survey completed on subject property. If not, the undersigned buyers and sellers affirm that the legal description on the closing documents of even date herewith is satisfactory, and the undersigned herein agree to hold **NORTHERN TITLE COMPANY OF IDAHO** and the undersigned Real Estate Company harmless as to any dispute resulting from not having a survey done at the time of the transaction.

15. Utilities and Water Rights

Escrow Agent shall not be responsible for the transfer of utilities. Escrow Agent shall not be responsible for the transfer of water rights or shares. The parties understand that they will have all utilities read and transferred as of the date of possession. Water shares and or rights are not being transferred in connection with this transaction.

Company: <u>BENNINGTON IRRIGATION COMPANY</u> Number of shares: 900 Company: <u>MONTPELIER IRRIGATION COMPANY</u> Number of shares: 100

• Buyer/Seller will transfer the water shares outside of closing and will not hold **NORTHERN TITLE COMPANY OF IDAHO** responsible for any shares transferred incorrectly.

Northern Title Company of Idaho has no knowledge of the fees and/or dues associated with the water rights. If you want any further information you need to contact the secretary of the water company.

16. Cancellation of Escrow

Any party desiring to cancel this escrow shall deliver written notice of cancellation to Escrow Agent. Within a reasonable time after receipt of such notice, Escrow Agent shall send by standard mail to the address on the escrow instructions, one copy of said notice to the other party(ies). Unless written objection to cancellation is delivered to Escrow Agent by a party within 10 days after date of mailing, Escrow Agent is authorized, at its option, to comply with the notice and terminate the escrow. If a written objection is received by Escrow Agent, Escrow Agent is authorized, at its option, to hold all funds and documents in escrow (subject to the funds held fee) and to take no other action until otherwise directed by either the parties' mutual written instructions or a final order of court of competent jurisdiction. If no action is taken on this escrow within 6 months after the closing date specified in the escrow instructions, Escrow Agent's obligations shall, at its option, terminate. Upon termination of this escrow, the parties shall pay all fees, charges and reimbursements due to Escrow Agent and all documents and remaining funds held in escrow shall be returned to the parties depositing same.

17. Conflicting Instructions & Disputes

If Escrow Agent becomes aware of any conflicting demands or claims concerning this escrow, Escrow Agent shall have the right to discontinue all further acts on Escrow Agent's part until the conflict is resolved to Escrow Agent's satisfaction. Escrow Agent has the right at its option to file and action in interpleader requiring the parties to litigate their claims/rights. If such an action is filed, the parties jointly and severally agree (a) to pay Escrow Agent's reasonable attorney's fees, and (b) that Escrow Agent is fully released and discharged from all further obligations under the escrow. If an action is brought involving this escrow and/or Escrow Agent, the parties agree to indemnify and hold the Escrow Agent harmless against liabilities, damages and costs incurred by Escrow Agent (including reasonable attorney's fees and costs) except to the extent that such liabilities, damages and costs were caused by the gross negligence or willful misconduct of Escrow Agent.

18. Usury

Escrow Agent is not to be concerned with usury as to any loans or encumbrances in this escrow and is hereby released of any responsibility and/or liability therefor.

19. Insurance Policies

In all matters relating to insurance, Escrow Agent may assume that each policy is in force and that the necessary premium has been paid. Escrow Agent is not responsible for obtaining fire, hazard or liability insurance, unless Escrow Agent has received specific written instructions to obtain such insurance prior to close of escrow from the parties or their respective lenders.

20. Compliance:

The undersigned hereby further agree, if required by closing agent, to cooperate and adjust clerical errors, and or further documentation which may be deemed necessary to comply with any Real Estate Purchase Contract governing this transaction and it's intent.

P D

14. Survey

The undersigned buyers and sellers hereby acknowledge that they have (chosen to/chosen not to) have a survey completed on subject property. If not, the undersigned buyers and sellers affirm that the legal description on the closing documents of even date herewith is satisfactory, and the undersigned herein agree to hold NORTHERN TITLE COMPANY OF IDAHO and the undersigned Real Estate Company harmless as to any dispute resulting from not having a survey done at the time of the transaction.

15. Utilities and Water Rights

Escrow Agent shall not be responsible for the transfer of utilities. Escrow Agent shall not be responsible for the transfer of water rights or shares. The parties understand that they will have all utilities read and transferred as of the date of possession. Water shares and or rights are not being transferred in connection with this transaction.

Company: <u>BENNINGTON IRRIGATION COMPANY</u> Number of shares: 900 Company: <u>MONTPELIER IRRIGATION COMPANY</u> Number of shares: 100

 Buyer/Seller will transfer the water shares outside of closing and will not hold NORTHERN TITLE COMPANY OF IDAHO responsible for any shares transferred incorrectly.

Northern Title Company of Idaho has no knowledge of the fees and/or dues associated with the water rights. If you want any further information you need to contact the secretary of the water company.

16. Cancellation of Escrow

Any party desiring to cancel this escrow shall deliver written notice of cancellation to Escrow Agent. Within a reasonable time after receipt of such notice, Escrow Agent shall send by standard mail to the address on the escrow instructions, one copy of said notice to the other party(ies). Unless written objection to cancellation is delivered to Escrow Agent by a party within 10 days after date of mailing, Escrow Agent is authorized, at its option, to comply with the notice and terminate the escrow. If a written objection is received by Escrow Agent, Escrow Agent is authorized, at its option, to hold all funds and documents in escrow (subject to the funds held fee) and to take no other action until otherwise directed by either the parties' mutual written instructions or a final order of court of competent jurisdiction. If no action is taken on this escrow within 6 months after the closing date specified in the escrow instructions, Escrow Agent's obligations shall, at its option, terminate. Upon termination of this escrow, the parties shall pay all fees, charges and reimbursements due to Escrow Agent and all documents and remaining funds held in escrow shall be returned to the parties depositing same.

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18. Usury

Escrow Agent is not to be concerned with usury as to any loans or encumbrances in this escrow and is hereby released of any responsibility and/or liability therefor.

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In all matters relating to insurance, Escrow Agent may assume that each policy is in force and that the necessary premium has been paid. Escrow Agent is not responsible for obtaining fire, hazard or liability insurance, unless Escrow Agent has received specific written instructions to obtain such insurance prior to close of escrow from the parties or their respective lenders.

20. Compliance:

The undersigned hereby further agree, if required by closing agent, to cooperate and adjust clerical errors, and or further documentation which may be deemed necessary to comply with any Real Estate Purchase Contract governing this transaction and it's intent.

P. 05

Escrow Agent is authorized to rely upon copies of documents, which include facsimile, electronic, NCR, or photocopies as if they were an originally executed document. If requested by Escrow Agent, the originals of such documents shall be delivered to Escrow Agent. Escrow Agent may withhold documents and/or funds due to the party until such originals are delivered. *Documents to be recorded MUST contain original_signatures*. Escrow Agent may furnish copies of any and all documents to the lender(s), real estate broker(s), attorney(s) and/or accountant(s) involved in this transaction upon their request.

22. Tax Reporting, Withholding & Disclosure

The parties are advised to seek independent advice concerning the tax consequences of this transaction, including but not limited to, their withholding, reporting and disclosure obligations. Escrow Agent does not provide tax or legal advice and the parties agree to hold Escrow Agent harmless from any loss or damage that the parties may incur as a result of their failure to comply with federal and/or state tax laws. WITHHOLDING OBLIGATIONS ARE THE EXCLUSIVE OBLIGATIONS OF THE PARTIES. ESCROW AGENT IS NOT RESPONSIBLE TO PERFORM THESE OBLIGATIONS UNLESS ESCROW AGENT AGREES IN WRITING.

A. Taxpayer Identification Number Reporting

Federal law requires Escrow Agent to report Seller's social security number and/or tax identification number, forwarding address, and the gross sales price to the Internal Revenue Service ("IRS"). Escrow can not be closed nor any documents recorded until the information in provided and Seller certifies it's accuracy to Escrow Holder.

B. Federal Withholding & Reporting

Certain federal reporting and withholding requirements exist for real estate transactions where the seller (transferor) is a non-resident alien, a non-domestic corporation or partnership controlled by non-residents or non-resident corporations or partnerships.

C. Taxpayer Identification Disclosure

Parties to a residential real estate transaction involving seller-provided financing are required to furnish, disclose, and include taxpayer identification numbers in their tax returns. Escrow Agent is not required to transmit the taxpayer I.D. numbers to the IRS of the parties. Escrow Agent is authorized to release any party's taxpayer I.D. numbers to any other party upon receipt of a written request. The parties waive all rights of confidentiality regarding their taxpayer I.D. numbers and agree to hold Escrow Agent harmless against any fees, costs, or judgments incurred and/or awarded because of the release of taxpayer I.D. numbers.

23. Privacy Policy

The undersigned Buyer and Seller hereby acknowledge receipt of a copy of the Privacy Policy of Northern Title Company and Escrow Agent.

24. Legal Counsel

The undersigned acknowledge that they have the right to seek legal counsel and tax advice in connection with this transaction. I/we the undersigned real estate salesperson/broker have reviewed the foregoing statement and certify that the above mentioned statement is accurate accounting of the transaction(s) between buyer and seller herein.

I/We, the undersigned Real Estate Agents/Brokers have reviewed this statement and all other related closing documents including the HUD-1 Settlement Statement and certify that the documents are an accurate accounting of the transaction reflecting the agreements, by both Buyer and Seller, as stated in the Real Estate Purchase Contract.

	Quan Stun
Listing Agent/Broker	Selling Agent/Broker
STEVEN B. COMPARINGS	
ROGER L. STEPHENS TRUSTEE	BARBARA L. STEPHENS TRUSTEE

"Escrow Agent":

NORTHERN TITLE COMPANY OF IDAHO



21. Copies of Documents: Authorization to Release

Escrow Agent is authorized to rely upon copies of documents, which include facsimile, electronic, NCR, or photocopies as if they were an originally executed document. If requested by Escrow Agent, the originals of such documents shall be delivered to Escrow Agent. Escrow Agent may withhold documents and/or funds due to the party until such originals are delivered. *Documents to be recorded MUST contain original signatures*. Escrow Agent may furnish copies of any and all documents to the lender(s), real estate broker(s), attorney(s) and/or accountant(s) involved in this transaction upon their request.

22. Tax Reporting, Withholding & Disclosure

The parties are advised to seek independent advice concerning the tax consequences of this transaction, including but not limited to, their withholding, reporting and disclosure obligations. Escrow Agent does not provide tax or legal advice and the parties agree to hold Escrow Agent harmless from any loss or damage that the parties may incur as a result of their failure to comply with federal and/or state tax laws. WITHHOLDING OBLIGATIONS ARE THE EXCLUSIVE OBLIGATIONS OF THE PARTIES. ESCROW AGENT IS NOT RESPONSIBLE TO PERFORM THESE OBLIGATIONS UNLESS ESCROW AGENT AGREES IN WRITING.

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I/We, the undersigned Real Estate Agents/Brokers have reviewed this statement and all other related closing documents including the HUD-I Settlement Statement and certify that the documents are an accurate accounting of the transaction reflecting the agreements, by both Buyer and Seller, as stated in the Real Estate Purchase Contract.

Directly Julion-Palle Listing Agent Broker	Selling Agent/Broker
STEVEN B. CUMMINGS ROGERL, STEPHENS TRUSTEE	Balbara L. Stephens Truster

"Escrow Agent": THERN VITLE COMPANY OF IDAHO

BY: The Marrial

Dof NIT Obi

EXHIBIT "H"

That NT Obj

NTBL-1183 STEVEN B. CUMMINGS 43 NORTH 100 EAST AMERICAN FORK, UT 84003

COPY WARRANTY DEED

ROGER L. STEPHENS and BARBA L. AND BARBARA L. STEPHENS F	
of PROVIDENCE, County of CACHE. State of	of UT.
hereby CONVEY AND WARRANT to	
STEVEN B. CUMMINGS,	
of . County of SALT LAKE, State of UT	Grantee(s)
for the sum of TEN DOLLARS AND OTHE described tract of land in Bear Lake County, S	R GOOD AND VALUABLE CONSIDERATION, the following tate of idaho:
See Attached Exhibit "A"	
Witness, the hand(s) of said Grantor(s), this At	igust 3, 2007.
	ROGER L. STEPHENS TRUSTEE
	BARBARA L. STEPHENS TRUSTEE
CODE!	
COPY	
State of IDAHO)	
County of BEAR LAKE)	
ROGER L. STEPHENS TRUSTEE and BA	re me LORI THORNOCK, a Notary Public in and for the State, RBARA L. STEPHENS TRUSTEE the signer(s) of the within that they executed the same as Trustees of the STEPHENS
(ASHE) TRESTOBILE	· · · · · · · · · · · · · · · · · · ·
	Notary Public
Residing: Bloomington, ID Expires: 10/24/2011	

That ATT Abi

"EXHIBIT A"

PARCEL A

BEGINNING AT THE SOUTHWEST CORNER OF THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF SECTION 21, TOWNSHIP 12 SOUTH, RANGE 44 EAST OF THE BOISE MERIDIAN, BEAR LAKE COUNTY, IDAHO, RUNNING THENCE NORTH 80 RODS; THENCE EAST 62.5 RODS; THENCE NORTH 80 RODS; THENCE EAST 52.5 RODS; THENCE SOUTH 180 RODS; THENCE WEST 2530 FEET; THENCE SOUTH 180 RODS; THENCE WEST 2530 FEET; THENCE SOUTH 180 RODS; THENCE NORTH 150 WEST 21X FEET; THENCE SOUTH 751 300 WEST 21X FEET; THENCE NORTH 150 WEST 21X FEET; THENCE SOUTH 751 300 WEST 21X FEET; THENCE NORTH 150 WEST 21X FEET; THENCE SOUTH 751 300 WEST 21X FEET; THENCE NORTH 150 WEST 21X FEET; THENCE WEST 21X FEET; THENCE WEST 21X FEE

EXCEPT ALL OF THAT PORTION OF THE FOLLOWING DESCRIBED LAND LYING EASTERLY OF U.S. HIGHWAY 30.

PARCEL D

COMMENCING AT A POINT 11.16 CHAINS EAST FROM THE NORTHEAST CORNER OF THE SOUTHEAST QUARTER OF SECTION 21, TOWNSHIP 12 SOUTH, RANGE 44 EAST OF THE BOISE MERIDIAN, BEAR LAKE COUNTY, IDAHO, RUNNING THENCE EAST 3.96 CHAINS; THENCE SOUTH 131 45' EAST 8.87 CHAINS; THENCE SOUTH 75' WEST 44.63 CHAINS; THENCE NORTH 891 55' WEST 13.66 CHAINS; THENCE NORTH 30' WEST 6.54 CHAINS; THENCE NORTH 75' EAST 52.50 CHAINS TO THE PLACE OF BEGINNING.

PARCEL E

BEGINNING AT THE NORTHWEST CORNER OF THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 21, TOWNSHIP 12 SOUTH, RANGE 44 EAST OF THE BOISE MERIDIAN, BEAR LAKE COUNTY, IDAHO, RUNNING THENCE EAST 34.17 CHAINS; THENCE SOUTH 76° 15' WEST 35.30 CHAINS; THENCE NORTH 9.12 CHAINS, MORE OR LESS, TO THE PLACE OF BEGINNING.

PARCELE

COMMENCING AT A POINT 28 RODS, MORE OR LESS, NORTH AND 11 RODS, MORE OR LESS, EAST OF THE SOUTHWEST CORNER OF THE SOUTHWEST QUARTER OF SECTION 21, TOWNSHIP 12 SOUTH, RANGE 44 EAST OF THE BOISE MERIDIAN, BEAR LAKE COUNTY, IDAHO, RUNNING THENCE NORTHEASTERLY 69 RODS, MORE OR LESS, TO 40 ACRE LINE; THENCE NORTH 39 RODS, MORE OR LESS, TO 40 ACRE LINE; THENCE SOUTHWESTERLY 40 ACRE LINE; THENCE SOUTHWESTERLY 4 112 RODS AND 8 LINKS TO THE LAND OF GEORGE PERKINS; THENCE SOUTHWESTERLY ALONG THE LINE TO THE PLACE OF BEGINNING.

PARCEL

BEGINNING AT THE SOUTHWEST CORNER OF THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF SECTION 21, TOWNSHIP 12 SOUTH, RANGE 44 EAST OF THE BOISE MERIDIAN, BEAR LAKE COUNTY, IDAHO, AND RUNNING THENCE WEST 1239 FEET; THENCE SOUTH 35° WEST 175 FEET; THENCE SOUTH 35° 30° EAST 1494 FEET; THENCE NORTH 75° EAST 3851 FEET, MORE OR LESS, TO THE WEST LINE OF U.S. HIGHWAY 30° NORTH RIGHT OF WAY; THENCE NORTH 15° WEST ALONG SAID RIGHT OF WAY; 888 FEET; THENCE SOUTH 75° 30′ WEST 218 FEET; THENCE NORTH 15° WEST 218 FEET; THENCE SOUTH 75° 30′ WEST 2764 FEET; THENCE NORTH 164 FEET TO THE PLACE OF BEGINNING.

A PERPETUAL EASEMENT OR RIGHT OF WAY OVER A STRIP OF LAND 20 FEET IN WIDTH LEADING FROM THE COUNTY ROAD TO THE FOLLOWING DESCRIBED REAL PROPERTY:

THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF SECTION 22 IN TOWNSHIP 12 SOUTH OF RANGE 44 EAST OF THE BOISE MERIDIAN, BEAR LAKE COUNTY, IDAHO.

AND RUNNING THROUGH A PART OF THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 21 AND THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 22, TOWNSHIP 12 SOUTH OF RANGE 44 EAST OF THE BOINE MERIDIAN, BEAR LAKE COUNTY, IDAHO.

EXHIBIT "I"

The ATT ()bi

Instrument # 199030
BEAR LAKE COUNTY

2007.04-05
RECORDER TO THE TO THE CO.
KERRY HADDOCK
BL-COMO RECORDS Depary

To The Co.

RECORD RECORDS Depary

To The Co.

The

RECORDATION REQUESTED BY:

WHEN RECORDED MAIL TO: Steven B. Cummings 43 North 100 East American Fork, Ut \$4003

WARRANTY DEED

Granter	Orantee
Roger L. And Barbare L. Stephens Family Trust, Roger L. Stephens and Barbare L. Stephens, Trustees 436 Cobblestone Providence, Utah 84332	Steven B. Cummings 43 North 100 East American Fork, Ut 84003

FOR GOOD AND VALUABLE CONSIDERATION, the receipt of which is hereby acknowledged, the Grantor hereby sells and forever transfers the following parcels of real property to the Grantoe, including the Grantor's right, title and interest therein:

SEE EXHIBIT "A" ATTACHED HERETO AND INCORPORATED BY REFERENCE

TOGETHER WITH one hundred (100) shares of water stock in Montpelier Irrigation Company and nine hundred (900) shares of water stock in Beanington Irrigation Company.

TOGETHER WITH all pumps, motors, wheel lines, main line and other irrigation equipment.

TOGETHER WITH AND INCLUDING any and all fixtures and improvements, any and all appurtenances, tenements, and hereditaments, and any and all rents, issues, and profits that relate or otherwise pertain to the foregoing parcels of real property.

TO HAVE AND TO HOLD the foregoing parcels of real property unto the Crantee and its successors and assigns forevet.

The Grantor hereby covenants that the Grantor is the owner in fee simple of the foregoing parcels of real property; that the foregoing parcels of real property are free and clear of any and all mortgages, liens, or other excumbrances, excepting encumbrances of record in the records of Bear Lake County, Idaha, current taxes, ordinances and federal and state rights and reservations, including, without

WARRANTY DEED - I

D. A AH Ahi

199030

Idaho, current texes, ordinances and federal and state rights and reservations, including, without limitation, patents, oil, gas and minerals, conflicts in boundary lines, shortage in area, encroachments or any other facts which a correct survey would disclose, essentents or claims of essentent not shown by the public records, use restrictions and building and zoning regulations and ordinances of any governmental unit; and that the Grantors will warrant and defend the same from any and all lawful claims whatsoever.

IN WITNESS WHEREOF, the Grantors hereunto set their hands this 32d day of

ROGER L. AND BARBARA L. STEPHENS FAMILY TRUST

BARBARA L STEPHENS

STATE OF Wash

On the 3nd day of deget 2007, before me, a Notary Public, personally appeared Roger L. Stephens and Barbara L. Stephens, Trustees of the Roger L. And Barbara L. Stephens Family Trust, known or identified to me to be the persons who executed the Warranty

Doed, and duly acknowledged to me that they executed this Warranty Deed.

NOTARY PUBLIC FOR: Denle X. Obline Residing at Mark 205 My Commission Expires: A57/310

WARRANTY DEED - 2

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199030

EXHIBIT A

PARCELA

PARCELLA BEGINNING AT THE BOUTHWEST CORNER OF THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF SECTION 21, TOWNSHIP 12 SOUTH, RANGE 44 EAST OF THE BOISE MERIDIAN, BEAR LAKE COUNTY, DIAHO, RUNNING THENCE NORTH 86 ROOS; THENCE EAST 82.5 ROOS; THENCE NORTH 86 ROOS; THENCE SAT 25.5 ROOS, THENCE SOUTH 15 EAST 85.2 FEET; THENCE SOUTH 78" 30" WEST 318 FEET; THENCE NORTH 19" WEST 218 FEET; THENCE SOUTH 76" 30" WEST 2784 FEET; THENCE NORTH 164 FEET TO THE PLACE OF BEGINNING.

EXCEPT ALL OF THAT PORTION OF THE FOLLOWING DESCRIBED LAND LYING EASTERLY OF U.S. HIGHWAY

PARCEL D

COMMENCING AT A POINT 11.16 CHAINS EAST FROM THE NORTHEAST CORNER OF THE SOUTHEAST CHARTER OF SECTION 21, TOWNSHIP 12 BOUTH, RANGE 44 EAST OF THE BOISE MERIDIAN, BEAR LAKE COUNTY, IDAHO, RUNNING THENCE EAST 3.50 CHAINS; THENCE SOUTH 13" 45 EAST 8.57 CHAINS; THENCE SOUTH 75" WEST 44.43 CHAINS; THENCE NORTH 86" EF WEST 13.56 CHAINS; THENCE NORTH 35" WEST 4.54 CHAINS; THENCE NORTH 75" EAST 52.50 CHAINS TO THE PLACE OF BEGINNING.

PARLELE BEGINNING AT THE NORTHWEST CORNER OF THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 21, TOWNSKIP 12 SOUTH, RANGE 44 EAST OF THE SOISE MERIDIAN, BEAR LAKE COUNTY, DRAHO, RUNNING THENCE EAST 34,17 CHANNS; THENCE SOUTH 75" 15" WEST 34,30 CHANS; THENCE NORTH 51/2 CHANNS; THENCE NORTH 51/2 CHANNS, MORE OR LESS, TO THE PLACE OF BEGINNING.

PARCEL P

PARCEL F.

COMMENCING AT A POINT 28 ROOS, MORE OR LESS, NORTH AND 11 ROOS, MORE OR LESS, EAST OF THE
SOUTHWEST CORNER OF THE SOUTHWEST QUARTER OF SECTION 21, TOWNSHIP 12 SOUTH, RANGE 41
EAST OF THE BOISE MERIDIAN, BEAR LAKE COUNTY, IDAHO, RUNNING THENCE NORTHEASTERLY 89
ROOS, MORE OR LESS, TO 44 ACRE LINE; THENCE NORTH 38 ROOS, MORE OR LESS, TO 44 ACRE LINE;
THENCE EAST ALONG BAID LINE OR ROOS, THENCE NORTH ALONG 40 ACRE LINES, TO ADD THENCE
SOUTHWESTERLY 112 ROOS AND 8 LINES TO THE LAND OF GEORGE PERKINS; THENCE SOUTHWESTERLY
ALONG THE LINE TO THE PLACE OF BEGSWING.

PARCEL. |
BESPANNS AT THE SOUTHWEST CORNER OF THE BOUTHEAST CHARTER OF THE NORTHWEST CHARTER
OF SECTION 21, TOWNSHIP 12 SOUTH, RANGE 44 EAST OF THE BOISE MERIDIAN, BEAR LAKE COUNTY,
DAHO, AND RUNNING THENCE WEST 1238 FEET; THENCE SOUTH 34* WEST 178 FEET; THENCE SOUTH 35*
37 EAST 1494 FEET; THENCE NORTH 78* EAST 3851 FEET; MORE OR LESS, TO THE WEST LINE OF U.S.
HIGHWAY 30 NORTH RIGHT OF WAY; THENCE NORTH 19* WEST ALONG SAID RIGHT OF WAS 856 FEET;
THENCE SOUTH 78* 35* WEST 314 FEET; THENCE MORTH 19* WEST 218 FEET; THENCE SOUTH 78* 35*
WEST 3784 FEET; THENCE NORTH 164 FEET TO THE PLACE OF BESTANNING.
A PERPETUAL EASEMENT OR RIGHT OF WAY OVER A STRIP OF LAND 25 FEET IN WIDTH LEADING FROM
THE COURTY ROAD TO THE FOLLOWING DESCRIBED REAL PROPERTY:
THE SOUTHEAST CHARTER OF THE NORTHWEST CHARTER OF BECTION 22 IN TOWNSHIP 12 SOUTH OF
RANGE 44 EAST OF THE BOISE MERDIAN, BEAR LAKE COUNTY, IDAHO.
AND RUNNING THROUGH A PART OF THE SOUTHEAST CHARTER OF THE NORTHEAST CHARTER OF
SECTION 21 AND THE SOUTHWEST CHARTER OF THE NORTHEAST CHARTER OF
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WAERANTY DEED - 3

Jef NT Obi

EXHIBIT "J"

Def NT Obj

Monique Bair

From:

Lori [lorit@northerntitie.net]

Sent: To: Wednesday, April 02, 2008 4:17 PM

Subject:

moniqueb@northerntitle.net NTBL-1183



20080402151648.ti f (75 KB)

Monique,

This policy was on hold as per the buyer.....to be put in a trust Waiting for a copy of the trust. Buyer was on the road and could not send Tried over the months to contact him...no answer even googled his name Recently received a disgruntled letter asking where his deed to the trust was and his policy. Cannot find copy of that letter. So I replied...see attached He countered with a registered letter. Please see both attached.

I still cannot put into the TRUST no copy of the trust And there was NO money escrowed. And per the bargained REPC date 07/02/07 it was to be put into STEVEN B. CUMMINGS. TRANSACTION WAS CLOSED, RECORDED AND DISBURSED only policy still needs to be issued.

Please use the re-recorded corrected legal description.

Call me after you read this and we can visit Thanks,

Lori Thornock lorit@northerntitle.net NORTHERN TITLE COMPANY 680 North 4th Street; Ste. 1 Montpelier, Idaho 83254 208-847-2567 208-847-0881-FAX

-----Original Message----

From: MFX2530 [mailto:mfxbear@northerntitle.net]

Sent: Wednesday, April 02, 2008 4:17 PM

To: Lori

Subject: Internet FAX Message from 2088470881

This is an internet facsimile message.

Sent from : MFX2530<mfxbear@northerntitle.net>

2088470881

Number of pages : 2

Date : Wed, 02 Apr 2008 15:16:47 -0700

Please see the file attached.

the buyer wants portly desured to contact them to gua out			Before issural	povicy cau	10R1.	Monard	
16 out policy t	ey so endural name						
TIME CALLER FOUR CONTROL	dasul policy						
3-10-08	4-8-08					A	

That MT Obj

EXHIBIT "K"

Def NT Obj

EXHIBIT

3 8

STEPHENS
HIS DISTRAIKSHT

05/23/2008 12:10 - RECEIVED.....A CALL FROM GARY STEPHENS A SON OF ROGER AND BARBARA STEPHENS HE CALLED WITH CONCERN AND ASKED FOR MY ASSISTANCE IN WHAT HE SHOULD DO TO HELP HIS DISTRAUGHT FATHER

I SUGGESTED HE CALL RANDY BUDGE HIS PARENTS ATTORNEY.

MR. BUDGE IS AN EXCELLENT ATTORNEY AND COULD ADVISE HIM AS TO THE LEGAL STANDPOINT.. ALSO STATED THAT THERE IS ALOT THAT I COULD NOT DISCUSS WITH HIM BECAUSE OF PRIVACY ISSUES 435-452-2360

06/10/2008 14:53 - TALKED TO RANDY BUDGE ATTORNEY FOR STEPHENS AND WENT OVER THE CHRONOLOGICAL ORDER OF EVENTS AND EVENTS OF THIS TRANSACTION

06/05/2008 12:10 - sent all docs that may or may not be relative to Jay Davis at Logan for review and response to attorney for Mr. Cummings sent overnight UPS

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ALSO HAVE A VOICE MAIL FROM PAUL DAVIS REGARDING A LETTER OF COMPLAINT FROM MR. CUMMINGS THAT HE ALSO WOULD LIKE TO DISCUSS.

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04/02/08 4:31 - received a letter back from Mr. Cummings w/o the trust....

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08/01/2007 13:29 - RECEIVED AN ADDENDUM TO THE REPC ASSIGNING THIS PROPERTY TO STEVEN B. CUMMINGS 08/01/2007 11:35 - FIRST AMERICAN EXCHANGE CONTACT LAURA 1-865-516-1031 856-669-6096 FAX STEVEN B. CUMMINGS STEVEN B. CUMMINGS & LAURA S. CUMMINGS JEB, BCB AND SBC FAMILY SECOND TRUST,

EMAIL

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07/26/2007 08:03 - Turbo Title Export Sent to lorit@northerntitle.net Items: g:\tuw\Export\NTBL-1183.TWF

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Def NT Ob

Nathan M. Olsen, ISB No. 7373 PETERSEN, MOSS, HALL & OLSEN 485 "E" STREET IDAHO FALLS, ID 83402

Telephone: (208) 523-4650 Facsimile: (208) 524-3391

Email: nolsen@pmholaw.com

Attorneys for Plaintiff, Steven B. Cummings

TRANSPORT COURT SIXTH UNDIGIAL DISTRICT AFAR LAND COUNTY HUA.

2012 JUL 12 AM 11:08

KERRY HADDOCK, CLERK

FPHTY _____CASE NO.

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BEAR LAKE

STEVEN B. CUMMINGS, an individual residing in Utah,

Plaintiff.

vs.

ROGER L. STEPHENS, an individual residing in Providence, Utah; NORTHERN TITLE COMPANY OF IDAHO, INC., an Idaho corporation; JOHN DOES I-X,

Defendants.

ROGER L. STEPHENS, an individual residing in Providence, Utah; NORTHERN TITLE COMPANY OF IDAHO, INC., an Idaho corporation,

Third Party Plaintiffs,

VS.

DOROTHY JULIAN, an individual residing in Eagle, Idaho, EVAN SKINNER, an individual residing in Montpelier, Idaho, RYAN OLSEN, an individual residing in Case No.: CV-09-183

PLAINTIFF'S RESPONSE IN
OPPOSITION TO NORTHERN TITLE'S
MOTION TO EXCLUDE LENORE
KATRI AND GREGORY KELLEY

1 | RESPONSE IN OPPOSITION TO NORTHERN TITLE'S MOTION TO EXCLUDE LENORE KATRI AND GREGORY KELLEY

Georgetown, Idaho, EXIT REALTY OF BEAR LAKE, LLC, an Idaho Limited Liability Company, JOHN DOES I-X,

Third Party Defendants.

The Plaintiff Cummings offers the following response in opposition to Northern Title's Motion to Exclude Lenore Katri and Gregory Kelley. This response is supported by the pleadings previously submitted, as well as the affidavit of Nathan Olsen filed contemporaneously herewith. In addition, Cummings directs the Court to the pleadings filed and arguments made with regard to Cummings' Motion to Exclude Northern Title's Expert Witnesses/Northern Title's Motion for Leave to Extend Disclosure Deadline for Experts.

Moreover, Cummings submits for the Court's review and reference the entire deposition transcript of Ms Katri and Mr. Kelley. Because of the sheer volume, with the exception of Mr. Kelley's report, the exhibits to these depositions will not be provided, but will be available at the Court's request, and can be provided electronically if needed. Although the transcripts themselves are voluminous, because of the ongoing tendency of Northern Title to selectively refer to testimony out of context and disregard deposition testimony that clearly does not support its position, Cummings deems it necessary to provide the Court with the full transcript of these witnesses.

Cummings would also note that neither Ms. Katri nor Mr. Kelley has yet to offer testimony at trial, and without seeing the flow of evidence and foundation laid, it is premature at this point to be excluding testimony at this juncture.

^{2 |} RESPONSE IN OPPOSITION TO NORTHERN TITLE'S MOTION TO EXCLUDE LENORE KATRI AND GREGORY KELLEY

I. Northern Title Errantly States that Cummings did not Provide Expert Disclosures

This is a point that has been addressed *ad nauseam* before the Court. Indeed, Cummings timely provided a rather lengthy nine page expert witness disclosure "statement" which is all he is required to do under I.R.C.P. 26(b)(4). (See Exhibit B to Northern Title's Motion.) Northern Title needs to stop misrepresenting to the Court that Cummings "failed to make expert disclosures." The authority cited by Northern Title in support of excluding the experts, *Noble v. Ada County Elections*, 135 Idaho 495 (2000), applied specifically to a situation where the party did not make any witness disclosures and further failed to indicate such disclosures in responses to interrogatories. That is simply not the case here. Northern Title's chief complaint, if there is one, in truth, is not whether Cummings made disclosures, but rather were his disclosures timely supplemented pursuant to I.R.C.P. 26(e). Pursuant to the argument below, Cummings' supplementation of his expert's testimony was proper and at the very least not prejudicial to Northern Title.

II. Cummings Supplementation of his Experts' Report was as Anticipated by Northern Title or at the Very Least was not Prejudicial to Northern Title Warranting Exclusion

Under I.R.C.P. 26(e), parties are allowed to "seasonably" supplement their responses to discovery. What is acceptable to the Court with regard to timing of such supplementation is within the discretion of the Court, and may include supplementation of expert testimony all the way up to the eve of trial depending on the circumstances. See, *Hopkins v. Duo-Fast Corp.*, 123 Idaho 205, 843 P.2d 207 (1993). In reviewing such supplementation, the trial judge should

^{3 |} RESPONSE IN OPPOSITION TO NORTHERN TITLE'S MOTION TO EXCLUDE LENORE KATRI AND GREGORY KELLEY

request an explanation of the late disclosure, weigh the importance of the testimony in question, determine the time needed for preparation to meet the testimony, and consider the possibility of a continuance. *Viehweg v. Thompson*, 103 Idaho 265, 271 (Idaho Ct. App. 1982). The Court should also admit the testimony where there has been no prejudice. *Wiseman v. Schaeffer*, 115 Idaho 537, 539, 768 P.2d 800, 802 (Ct. App. 1989.)

Even if such supplementation of the disclosures was necessary, there is no evidence to suggest that Cummings did not "seasonably" supplement such responses, and further that Northern Title anticipated anything different with what it was provided and when. After Cummings made his expert disclosures, Northern Title followed up on May 5, 2012, by filing a notice of deposition for these witnesses to occur on June 14, 2012. (See Notice of Depositions attached as Exhibit C.) Northern Title made no further requests, including interrogatories requesting documents, reports, etc... with regard to the experts. These two witnesses were notified, and prepared for their testimony accordingly. If their depositions would have been noticed at an earlier date, they would have managed their schedules to prepare for their testimony on the earlier date. Where Northern Title requested the depositions on a certain date, and nothing further before such dates, it is hard to conceive how they were prejudiced or, frankly, expected anything different.

As the Court noted in its July 6, 2012, Memorandum Decision, Mr. Kelley's appraisal report was provided at the June 14, 2012, deposition (a draft of which was provided by request the day before.) Even though this report was not provided with the initial disclosure, Cummings was justified and/or Northern Title's actions suggest that it was prejudiced by not receiving the report until that date. First, the disclosure explicitly states that Mr. Kelley was in the process of

^{4 |} RESPONSE IN OPPOSITION TO NORTHERN TITLE'S MOTION TO EXCLUDE LENORE KATRI AND GREGORY KELLEY

preparing a written report to reflect his testimony. Northern Title was therefore on notice that his report was incomplete, and expressed no concern. In fact, Northern Title did not request the report until two days before the deposition. Even then, Northern Title did not insist on a continuation of the deposition date to review the report, but instead proceeded to question Mr. Kelley for several hours with regard to his report. Further, Northern Title cannot argue that receiving this information at the time they did prejudices their "rebuttal" experts because it chose not to disclose any experts itself.

In short, Northern Title has had Cummings' timely disclosures, followed up with reports and depositions taken on a date of their choosing, which was still seven weeks before trial. It has had ample opportunity to receive and discover the testimony of Cummings' experts. There has been no prejudice. An exclusion of these witnesses under these circumstances is simply not warranted.

III. Lenore Katri is Qualified as an Expert to Testify with Regard to the Title and Escrow Duties of Northern Title

The fact that Ms Katri has not yet offered any testimony yet in the trial makes Northern Title's motion to exclude her very problematic because the Court would be basing its decision on anticipated testimony and without hearing the foundation and reasoning for the testimony. This issue at the very least should be reserved for trial.

In any case, Northern Title has no basis to exclude Ms. Katri's testimony, even if it is regard to the title aspects of Northern Title's duties. All that Ms. Katri has to show in order to qualify as an expert, is that she has the requisite "knowledge, skill, experience, training or education" to assist the trier of fact on the "matter at hand." *State v. Hopkins*, 113 Idaho 679,

^{5|}RESPONSE IN OPPOSITION TO NORTHERN TITLE'S MOTION TO EXCLUDE LENORE KATRI AND GREGORY KELLEY

747 P.2d 88 (Ct. App. 1987) Further, these five qualifications areas are "disjunctive" making "practical experience or special knowledge or training in a *related* field" sufficient. *Id* (emphasis added.) Under this standard, Ms. Katri provided ample testimony in her deposition to indicate that she has "specialized knowledge" and/or sufficient experience in the title and escrow industry to assist the trier of fact pursuant to Rule 702 of the Idaho Rules of Evidence. (See the first 34 pages of her deposition.) Certainly, the lions share of her experience has been as an escrow officer. However, she has had significant experience in working and coordinating with the title department, and that she is familiar with the "rules and policies that govern title officers." (Katri Dep. 29:15-23.) In particular, she offered the following testimony (conveniently omitted by Northern Title in their motion:)

- Q: You mentioned you are not a title officer, but what experience do you have in the title industry?
- A: Just long-standing working through a title company. You have to know title before you can really do closings because you have to know what's on that commitment to make sure that your buyers and sellers understand what's there and what you need to get releases on, what you need to pay.
- Q: So when you're functioning as an escrow or closing officer, is it fair to say that every transaction involves work with a title?
- A: Yes.
- Q: Whether you're a title officer or in the title department?
- A: Yes

Katri Dep. 157:11-25

This expertise demonstrated by Katri goes to the heart of Cummings' claims against

Northern Title, an makes her eminently qualified to provide "specialized knowledge" to the trier

^{6 |} RESPONSE IN OPPOSITION TO NORTHERN TITLE'S MOTION TO EXCLUDE LENORE KATRI AND GREGORY KELLEY

of fact as to how this transaction should have been handled by both the title and escrow department of Northern Title, which work hand in hand on every transaction. Northern Title's motion again omits key facts and law and should be denied.

CONCLUSION

Northern Title has by its own actions shown no prejudice or valid reason to exclude Cummings' timely disclosed experts, for which it has had ample opportunity and has in fact obtained all the information they could from these witnesses. Moreover, Northern Title has no basis to exclude Lenore Katri as a witness, who has had more than 30 years of experience in the title and escrow industry. It's motion should be denied.

DATED this 10 day of July, 2012.

PETERSEN MOSS HALL & OLSEN

Nathan M. Olsen

CERTIFICATE OF SERVICE

I hereby certify that I am a duly licensed attorney in the State of Idaho, with my office in Idaho Falls, Idaho, and that on the 10 day of July, 2012, I served a true and correct copy of the foregoing document on the persons listed below by first class mail, with the correct postage thereon, or by causing the same to be delivered in accordance with Rule 5(b), I.R.C.P.

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8 | RESPONSE IN OPPOSITION TO NORTHERN TITLE'S MOTION TO EXCLUDE LENORE KATRI AND GREGORY KELLEY

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Attorneys for Plaintiff, Steven B. Cummings

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KERRY HADBOOK, CLERK

EPUTY_____CASENO

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BEAR LAKE

STEVEN B. CUMMINGS, an individual residing in Utah,

Plaintiff,

VS.

ROGER L. STEPHENS, an individual residing in Providence, Utah; NORTHERN TITLE COMPANY OF IDAHO, INC., an Idaho corporation; JOHN DOES I-X,

Defendants.

ROGER L. STEPHENS, an individual residing in Providence, Utah; NORTHERN TITLE COMPANY OF IDAHO, INC., an Idaho corporation,

Third Party Plaintiffs,

VS.

Case No.: CV-09-183

AFFIDAVIT OF NATHAN M. OLSEN IN SUPPORT OF PLAINTIFF'S RESPONSE IN OPPOSITION TO NORTHERN TITLE'S MOTION TO EXCLUDE LENORE KATRI AND GREGORY KELLEY

1|AFFIDAVIT OF NATHAN M. OLSEN IN SUPPORT OF PLAINTIFF'S RESPONSE IN OPPOSITION TO NORTHERN TITLE'S MOTION TO EXCLUDE LENORE KATRI AND GREGORY KELLEY

DOROTHY JULIAN, an individual residing in Eagle, Idaho, EVAN SKINNER, an individual residing in Montpelier, Idaho, RYAN OLSEN, an individual residing in Georgetown, Idaho, EXIT REALTY OF BEAR LAKE, LLC, an Idaho Limited Liability Company, JOHN DOES I-X,

Third Party Defendants.

STATE OF IDAHO)
) ss
County of Bonneville)

- I, Nathan M. Olsen, do solemnly swear (or affirm) that the testimony given in this sworn statement is the truth, the whole truth, and nothing but the truth, that it is made on my personal knowledge, and that I would so testify in open court if called upon to do so.
- 1. Attached and incorporated as Exhibit 1 is a true and correct copy of "Notice of Taking Deposition of Lenore Katri" dated May 7, 2012.
- 2. Attached and incorporated as Exhibit 2 is a true and correct copy of "Notice of Taking Deposition of Gregory Kelley" dated May 7, 2012.
- 3. Attached and incorporated as Exhibit 3 is a true and correct copy of "Deposition of Gregory Kelley."
- 4. Attached and incorporated as Exhibit 4 is a true and correct copy of "Summary Appraisal Report" prepared by Gregory Kelley.

^{2 |} AFFIDAVIT OF NATHAN M. OLSEN IN SUPPORT OF PLAINTIFF'S RESPONSE IN OPPOSITION TO NORTHERN TITLE'S MOTION TO EXCLUDE LENORE KATRI AND GREGORY KELLEY

5. Attached and incorporated as Exhibit 5 is a true and correct copy of "Deposition of Lenore Katri."

FURTHER affiant saith naught.

DATED this 10 day of July, 2012.

Nathan M. Olsen

SUBSCRIBED AND SWORN to before me this 20 day of July, 2012.

STATE OF JOHN

Notary Public for State of Idaho

Residing at: Realey Solah

My Commission Expires. Ob -27-2018

^{3|}AFFIDAVIT OF NATHAN M. OLSEN IN SUPPORT OF PLAINTIFF'S RESPONSE IN OPPOSITION TO NORTHERN TITLE'S MOTION TO EXCLUDE LENORE KATRI AND GREGORY KELLEY

CERTIFICATE OF SERVICE

I hereby certify that I am a duly licensed attorney in the State of Idaho, with my office in Idaho Falls, Idaho, and that on the day of July, 2012, I served a true and correct copy of the foregoing document on the persons listed below by first class mail, with the correct postage thereon, or by causing the same to be delivered in accordance with Rule 5(b), I.R.C.P.

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^{4|}AFFIDAVIT OF NATHAN M. OLSEN IN SUPPORT OF PLAINTIFF'S RESPONSE IN OPPOSITION TO NORTHERN TITLE'S MOTION TO EXCLUDE LENORE KATRI AND GREGORY KELLEY

FROM-

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Attorneys for Plaintiff, Steven B. Cummings

CHAIRICT COURT
SIXTH JUDICIAL DISTRIBUTE
BEAR LARK COUNTY, ID. LE

2012 JUL 16 AM 8: 29

KERRY HADDOCK, CLERK

SEPUTY____CASE NO.

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BEAR LAKE

STEVEN B. CUMMINGS, an individual residing in Utah,

Plaintiff.

VS.

ROGER L. STEPHENS, an individual residing in Providence, Utah; NORTHERN TITLE COMPANY OF IDAHO, INC., an Idaho corporation; JOHN DOES I-X,

Defendants.

ROGER L. STEPHENS, an individual residing in Providence, Utah; NORTHERN TITLE COMPANY OF IDAHO, INC., an Idaho corporation,

Third Party Plaintiffs,

VS.

DOROTHY JULIAN, an individual residing in Eagle, Idaho, EVAN SKINNER, an individual residing in Montpelier, Idaho, RYAN OLSEN, an individual residing in Georgetown, Idaho, EXIT REALTY OF

Case No.: CV-09-183

REPLY BRIEF SUPPORTING
MOTION FOR LEAVE TO AMEND THE
COMPLAINT TO ALLEGE PUNITIVE
DAMAGES

^{1|}Reply Brief Supporting Motion For Leave to Amend the Complaint to Allege Punitive Damages

BEAR LAKE, LLC, an Idaho Limited Liability Company, JOHN DOES I-X,

Third Party Defendants.

The Plaintiff, Steven Cummings, offers the following reply in support of his Motion for Leave to Amend the Complaint to Allege Punitive Damages. The Court should note that in its "Objection and Response to Plaintiff's Motion," Northern Title essentially side steps most of the authority and facts raised in the Plaintiff's motion. The core of Northern Title's argument appears to be that the Plaintiff's motion is "untimely and unfair." (See Section I to Northern Title's Obj. and Resp.) However, this argument has no merit under strong Idaho precedent discussed below.

As indicated in Plaintiff's supporting brief, adding a punitive damages claim requires a motion under I.C. 6-1604 and a pre-trial hearing. In Idaho, where the Plaintiff has filed such a motion that only requests for punitive damages and where the Defendant has been on notice of a potential punitive damages claim, there is no prejudice to the Defendant even if the motion and hearing is held after discovery is held and only a few weeks before trial. See, *Vandelin v. Costco Wholesale Corporation*, 140 Idaho 416; 95 P.3d 34 (2004). In *Vandelin*, the plaintiff did not move to amend the complaint for punitive damages until after discovery was completed and less than a month before trial. The court granted the plaintiff's motion only eight days before trial. Plaintiff did not file the actual amended complaint until eight days into trial. The defendant appealed the decision, claiming that this late amendment was prejudicial and at the very least warranted a continuance of the trial date. The Supreme Court upheld the district court, indicating

^{2 |} Reply Brief Supporting Motion For Leave to Amend the Complaint to Allege Punitive Damages

that the Defendant was not prejudiced by the amended complaint because it was on notice of the punitive damages claim. Interestingly, a recent decision by the Supreme Court succinctly interprets its holding in *Vandelin*:

[I]n Vendelin v. Costco Wholesale Corp., this Court found that a plaintiff had sufficiently pled punitive damages when the "allegations contained in the amended complaint suggest[ed] that the prayer for punitive damages was based on injuries she sustained from falling merchandise while shopping at the Boise Costco." We also found that Costco had acknowledged the claim for punitive damages by raising three separate defenses to a claim for punitive damages in its Answer. Id. That was sufficient to show that Costco was on notice of the plaintiff's claim for punitive damages.

Villa Highlands, LLC v. Western Cmty. Ins. Co., 148 Idaho 598, 602 (Idaho 2010)(citations omitted).

In this case, Cummings notified Northern Title of his intention to amend his complaint to add punitive damages in the amended complaint. (See Plaintiff's 2nd Amended Complaint filed in October 2011.) Northern Title certainly anticipated this motion by the fact that it has previously moved this Court in its "Second Motion in Limine" to "bar" Cummings from "arguing the existence of punitive damages," and devoting several pages in its supporting memorandum to that effect. (See Def. North. Title's Memorandum in Support of Second Motion in Limine, June 21, 2012.) Northern Title thus had the requisite notice of this claim, and has even tried to argue against it before it was filed. Pursuant to Vandelin (as interpreted by Villa Highlands). Strong Idaho precedent support's Cummings' amendment at this stage of the litigation.

With regard to the other arguments (or lack thereof) by Northern Title, there is simply no dispute that Northern Title failed to obtain the written or verbal consent of Cummings before making changes at the request of seller's agent (and later the seller himself) contrary to the written purchase agreement and the title commitment (regardless of whatever version they are

^{3|}Reply Brief Supporting Motion For Leave to Amend the Complaint to Allege Punitive Damages

attempting to claim of these particular documents.) There is also no dispute that the company has been completely one sided and non-neutral from the very outset to now, including collaborating against its fiduciary and "indemnifying" one of the parties. Northern Title's incompetence combined with its total abandonment of its fiduciary, contractual and statutory duty to be "neutral," as well as the other factors mentioned, make it at least reasonably likely that the jury will find that its actions are subject to punitive damages. It's important to note that Northern Title initially was not defending claims against it, but rather made a decision to defend and indemnify one of the parties. As aptly pointed out in Ms. Katri's deposition testimony, this is well outside the bounds of expected conduct of a title and escrow agency, or an "extreme deviation from the standard of conduct" which warrants punitive damages. (The Court should note that the Defendant has offered no expert testimony of its own suggesting that this behavior is not an extreme deviation.)

Oddly, Northern Title is also trying to foist the likely inapplicable bad faith standard for traditional insurance carriers, (the proverbial attempt to pound a round block into a square hole). (See NT's Obj, and Resp. At 5) Interestingly, trying to apply such a standard to a title and escrow agency, if anything increases Cummings' argument of bad faith. Upon being made aware of a claim, Northern Title (1) "intentionally and unreasonably" failed to take any appropriate action to resolve the claim, (2) the claim is "not fairly debatable," (i.e. the written contract was clear and unambiguous and Northern Title admits that it did not obtain consent to make changes, (3) the failure to take care of the claim was not a "good faith mistake" (i.e. failure to obtain consent, failing to remain neutral, failing to follow its own internal instructions etc...) and (4) given the massive costs that Cummings has incurred because of Northern Title's actions above and beyond

^{4|}Reply Brief Supporting Motion For Leave to Amend the Complaint to Allege Punitive Damages

the loss of the east side property, he is not fully compensated by contract damages. Thus, even by Northern Title's likely misplaced authority, Cummings at least has even a stronger claim for bad faith.

In essence, Northern Title's "lateness" argument has no merit or basis in Idaho law in that it has long been under notice and expectation of a punitive damages claim, and it has failed to truly address the facts and law that support Cummings motion, which should therefore be granted.

DATED this 13th day of July, 2012.

ETERSON MUSS HALL & PLSEN

Nathan M. Olsen

^{5|}Reply Brief Supporting Motion For Leave to Amend the Complaint to Allege Punitive Damages

CERTIFICATE OF SERVICE

I hereby certify that I am a duly licensed attorney in the State of Idaho, with my office in Idaho Falls, Idaho, and that on the 13 day of July, 2012, I served a true and correct copy of the foregoing document on the persons listed below by first class mail, with the correct postage thereon, or by causing the same to be delivered in accordance with Rule 5(b), I.R.C.P.

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⁶ Reply Brief Supporting Motion For Leave to Amend the Complaint to Allege Punitive Damages

EISTRICT COURT SIX 16 PROPOINT DISTRICT BEAR LAKE COUNTY (15A);

2012 JUL 16 AM 10: 49

KERRY HADDOCK, CLERK

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IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BEAR LAKE

STEVEN CUMMINGS, an individual residing in Montana,) Case No. CV-2009-183
Plaintiff,	
VS.	
ROGER L. STEPHENS, an individual residing in Providence, Utah, NORTHERN TITLE COMPANY OF IDAHO, INC., an Idaho Corporation, JOHN DOES I-X.))) MEMORANDUM IN REPLY TO) PLAINTIFF'S OPPOSITION TO) EXCLUDING LENORE KATRI AND) GREGORY KELLEY & REQUEST TO) FILE OVER-LENGTH REPLY BRIEF
Defendants.)
ROGER L. STEPHENS, an individual,))
Third Party Plaintiff, vs.	
DOROTHY JULIAN, an individual residing in Eagle, Idaho,	
Third Party Defendant.	

COMES NOW Defendant NORTHERN TITLE COMPANY OF IDAHO, INC.,

(hereinafter "Defendant"), through counsel of Bearnson & Caldwell, LLC, and hereby provides

MEMORANDUM IN REPLY TO PLAINTIFF'S OPPOSITION TO EXCLUDING LENORE KATRI AND GREGORY KELLEY Case No. CV-09-183
Page 1

this Memorandum in Reply to Plaintiff's Opposition to Excluding Lenore Katri and Gregory Kelley.

I. CUMMINGS DID NOT "SEASONABLY SUPPLEMENT" HIS EXPERT DISCLOSURES AND HIS ATTEMPTS TO BLAME NORTHERN TITLE FOR HIS OWN INTENTIONAL DILATORY CONDUCT IS WITHOUT MERIT.

Under the Court's *Order Setting Jury Trial*, Cummings was required to make his expert disclosures within 140 days before trial, or by March 13, 2012. See *Order Setting Jury Trial* at ¶ 5. Further, Plaintiff's disclosures were required to be made with the same specificity required by Rule 26(b)(4)(A)(i) of the Idaho Rules of Civil Procedure. *Id.*; see also I.R.C.P. 26(b)(4)(A)(i). As is apparent, "this expert witness disclosure requirement under IRCP 16 is separate and distinct from any discovery demands served by the parties under IRCP 26 through IRCP 37." See *Memorandum Decision on Plaintiff's Motion to Exclude Northern Title's Expert and on Northern Title's Motion to Extend Disclosure Deadline*, 2 (July 6, 2012).

Cummings did not disclose his experts in accordance with Rule 26(b)(4)(A)(i) until Northern Title compelled such by deposition on June 14, 2012. This has been explained at length in Northern Title's *Memorandum in Support to Exclude Lenore Katri & Gregory Kelley*, 3-7 (July 2, 2012). In response, Plaintiff does not disagree, but rather shallowly asserts that he "seasonably supplemented" his disclosures on June 14, 2012.

The truth is, Cummings did not disclose the heart of his 264(b)(4)(A)(i) disclosures until June 14, 2012. Cummings did not disclose either of his experts' actual opinions, the basis of those opinions, or the documents on which those experts would rely, until June 14, 2012. Where these disclosures did not occur until June 14, 2012, it is absurd to think that Cummings' disclosure

MEMORANDUM IN REPLY TO PLAINTIFF'S OPPOSITION TO EXCLUDING LENORE KATRI AND GREGORY KELLEY Case No. CV-09-183
Page 2

was "supplemental" in nature. Indeed, Cummings' counsel, Nathan Olsen, admits that "Mr.

Kelley was anticipating to have that report prepared and submitted at the time of the deposition,"

and that Kelley was not "pressed . . . to finish his report" until the day before the deposition. See

Nathan Olsen Aff'd. at ¶ 6, attached hereto as Exhibit "A." (exhibits excluded). Similarly,

Cummings did not supply his other expert, Lenore Katri, with those documents on which she

based her opinions until far after March 13, 2012. See Katri Depo. 61:19-62:1, attached hereto as

Exhibit "B." In reality, Plaintiff's disclosures on June 14, 2012 were not supplement, but were a

mad dash to cover up an intentionally dilatory and prejudicial withholding of expert opinions.

Cummings' disclosures were also anything but "seasonable." First, the required deadline

of March 13, 2012 was the deadline for <u>all</u> of Cummings' expert disclosures, not least importantly

those disclosures that would explain the opinions and basis of opinions held by Cummings'

experts. See Order Setting Jury Trial at ¶ 5; see also I.R.C.P. 26(b)(4)(A)(i).

In an attempt to dodge his intentional withholding of expert opinions, Cummings makes

the unconscionable argument of "you didn't ask, so we didn't provide." The Court's scheduling

order was issued pursuant to Rule 16 of the Idaho Rules of Civil Procedure, and as that Order and

the Court explain "this expert witness disclosure requirement under IRCP 16 is separate and

distinct from any discovery demands served by the parties under IRCP 26 through IRCP 37." See

Memorandum Decision on Plaintiff's Motion to Exclude Northern Title's Expert and on Northern

Title's Motion to Extend Disclosure Deadline, 2 (July 6, 2012). In reality, if Plaintiff's argument

is to be believed, then the logical conclusion is that but Northern Title compelling Cummings'

MEMORANDUM IN REPLY TO PLAINTIFF'S OPPOSITION TO EXCLUDING LENORE KATRI AND GREGORY KELLEY

Case No. CV-09-183

Page 3

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expert disclosures by deposition, Cummings never would have made his 26(b)(4)(A)(i)

disclosures.

Finally, Cummings has prejudicially impaired Northern Title by withholding expert

opinions. First, it would be entirely and unfairly prejudicial if Cummings experts were admitted,

when Northern Title's experts have been excluded for the exact same reasons - withholding expert

opinions until June 14, 2012. Second, as explained in Northern Title's recently filed Motion to

Reconsider, Cummings' withholding of Kelley's appraisal report prejudiced Northern Title's

expert appraisal report, where both reports rely on different dates-of-sale in valuing the property.

See Mem. Supp. Mot. Reconsider at 5-7 (July 11, 2012).

Cummings expert disclosures were intentionally late, withheld until June 14, 2012. The

withholding of an expert's actual opinions and the basis of those opinions cannot and should not be

whisked away by a meritless Rule 26(e) "supplementation" argument. Plaintiff's June 14, 2012

disclosures were far from being supplemental in nature, and Plaintiff's counsel has admitted to

intentionally withholding expert reports until June 14, 2012. Plaintiff's actions have intentionally

and unfairly prejudiced Northern Title's case. Plaintiff's withholding of expert opinions has led

Northern Title's expert creating an appraisal that now would need to be significantly altered.

Further, the admission of Plaintiff's experts would be entirely prejudicial where Defendant's

experts have already been excluded for the exact same reasons which justify the exclusion of

Plaintiff's experts.

MEMORANDUM IN REPLY TO PLAINTIFF'S OPPOSITION TO EXCLUDING LENORE KATRI AND GREGORY KELLEY

Case No. CV-09-183

Page 4

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II. LENORE KATRI IS NOT QUALIFIED UNDER RULE 702 OF THE IDAHO RULES OF EVIDENCE, AND DUMPING THREE HUNDRED AND NINETY (390) PAGES OF DEPOSITION TEXT ON THE COURT IS NOTHING LESS THAN AN ATTEMPT TO HIDE THE BALL.

First and foremost, Plaintiff has properly pointed the Court to the most salient portions of Katri's deposition transcript, which show she lacks the requisite expertise to opine on specific title officer duties. As the Idaho Supreme Court pointed out as early as 1966, it is "not necessary that the entire deposition be introduced in evidence, but only the portions as were pertinent to the examination of the witness." *Hodge v. Borden*, 91 Idaho 125, 130-131, 417 P.2d 75, 80-81 (Idaho 1966). Similarly, "depositions are no longer physically filed with the clerk and the trial court is not required to review the entire deposition" *Brown v. Matthews Mortuary, Inc.*, 118 Idaho 830, 833, 801 P.2d 37 40 (Idaho 1990).

Here, Plaintiff seeks to have Lenore Katri, a title officer, opine on narrowly tailored specific issues in regards to the duties of a title officer. These include a duty to (1) complete the transaction according to the real estate purchase contract, (2) inform an insured of property that is encumbered or does not belong to the seller, (3) not issue a title policy months after closing even when relying on the explicit instructions of the insured, (4) not issue a title policy that contains a legal description different from the real estate purchase contract, (5) its insured after becoming aware of a potential claim, (6) preserve records after becoming aware of a claim and (7) to respond and remedy an insured in response to a claim. See *Pl's. Supp. Discl. Witnesses* at 2, ¶ 1, 4; see also *Id.* at 3, ¶¶ 8-9, 11-13, attached hereto as Exhibit "C."

MEMORANDUM IN REPLY TO PLAINTIFF'S OPPOSITION TO EXCLUDING LENORE KATRI AND GREGORY KELLEY Case No. CV-09-183
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Under Rule 702 of the Idaho Rules of Evidence, a witness must first be "qualified" before

tendering an expert opinion to the jury. I.R.E. 702. The record shows that neither Katri's

experience or expertise has been in a title department. Katri testified that she has never read any

booklets or publications on the duties of a title officer. See Ex. "B," Katri Depo. 30:25-31:3. At

most, Katri testified she receives periodical emails from the title guaranty company notifying its

insured's of changes in the law. Id. Katri testified she has no specific training on Idaho title

officer duties, procedures, or standards. *Id.* at 143:3-12. When asked if she could even evaluate

whether a title officer had taken the proper steps to put together a title commitment, Katri testified

that how to carry out this duty was outside of her realm of knowledge because she was not a title

officer. Id. at 165:7-16. Further, Katri testified that when technical questions arose regarding title

insurance, that she deferred such questions to a different department, the title department. Id. at

31:8-23.

Katri's above sworn testimony evidences that she does not possess the requisite expertise.

While she may have worked alongside title departments for some years, she has never worked

inside of a title department. To retort Katri's obvious lack of expertise, Cummings has dumped

three hundred and ninety (390) pages of deposition on the Court, and instructed the Court to go

find the expertise that not even Plaintiff could locate. Defendant Northern Title has taken those

steps for the Court, and based on the deposition testimony provided on June 14, 2012, Katri is not

qualified to testify as a title officer expert.

CONCLUSION

The record establishes by the documents submitted, the depositions taken, and by the

MEMORANDUM IN REPLY TO PLAINTIFF'S OPPOSITION TO EXCLUDING LENORE KATRI AND GREGORY KELLEY

Case No. CV-09-183

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admissions of Cummings' counsel, that Cummings intentionally postponed his 26(b)(4)(A)(i)

disclosures until compelled by Northern Title to disclose such on June 14, 2012. Cummings

intentionally intended for Kelley not to disclose his report until June 14, 2012, and Katri's expert

opinions were also intentionally withheld until June 14, 2012. By Cummings' own admissions,

the only reason he disclosed his expert opinions is because he was compelled to do so by Northern

Title's depositions. To date, Northern Title's own expert has been excluded, where its expert

appraisal report was not disclosed until June 14, 2012. Fairness, justice and logic dictate that if

the Court is to exclude Defendant Northern Title's expert, Plaintiff's experts must too be excluded.

Notwithstanding the above, Lenore Katri does not possess the requisite expertise to testify

as a title officer expert. She has no specific training, aside from periodical emails sent to her

escrow officer department. She has <u>never</u> worked inside of a title department, and presumably

has never even been licensed as a title officer. Katri has worked for many years in the "industry,"

but solely as an escrow officer. The controlling axiom is that she "may be qualified to render

opinions about some things within a particular professional field but not others." State v. Glass,

146 Idaho 77, 82-83, 190 P.3d 896, 901-902 (Idaho App. 2008).

DATED this 13 day of July, 2012.

BEARNSON & CALDWELL, LLC

Brad H. Bearnson

Aaron K. Bergman

Attorneys for Defendant Northern Title

MEMORANDUM IN REPLY TO PLAINTIFF'S OPPOSITION TO EXCLUDING LENORE KATRI AND GREGORY KELLEY Case No. CV-09-183

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the day of July, 2012, I served a true and correct copy of the above and foregoing MEMORANDUM IN REPLY TO PLAINTIFF'S OPPOSITION TO EXCLUDING LENORE KATRI AND GREGORY KELLEY & REQUEST TO FILE OVER-LENGTH REPLY BRIEF to the following person(s) as follows:

Nathan M. Olsen
Petersen Moss Hall & Olsen
485 "E" Street
Idaho Falls, Idaho 83402

Randall C. Budge Jason E. Flaig RACINE, OLSON, NYE, BUDGE & BAILEY, CHARTERED P.O. Box 1391; 201 E. Center Street Pocatello, Idaho 83204-1391

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jef@racinelaw.net

Mary Rynn andreasen

Nathan M. Olsen, ISB No. 7373 PETERSEN, MOSS, HALL & OLSEN 485 "E" STREET IDAHO FALLS, ID 83402 Telephone: (208) 523-4650

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Attorneys for Plaintiff, Steven B. Cummings

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BEAR LAKE

STEVEN B. CUMMINGS, an individual residing in Utah,

Plaintiff,

VS.

ROGER L. STEPHENS, an individual residing in Providence, Utah; NORTHERN TITLE COMPANY OF IDAHO, INC., an Idaho corporation; JOHN DOES I-X,

Defendants.

ROGER L. STEPHENS, an individual residing in Providence, Utah; NORTHERN TITLE COMPANY OF IDAHO, INC., an Idaho corporation,

Third Party Plaintiffs,

VS.

DOROTHY JULIAN, an individual residing

Case No.: CV-09-183

AFFIDAVIT OF NATHAN M. OLSEN
IN SUPPORT OF MOTION TO
EXCLUDE DEFENDANT, NORTHERN
TITLE COMPANY'S EXPERT
WITNESSES AND TESTIMONY AND
FOR SANCTIONS INCLUDING
ATTORNEY FEES UNDER IRCP 37(b)

1|Affidavit of Nathan M. Olsen in Support of Motion to Exclude Defendant, Northern Title Company's Expert Witnesses and Testimony and for Sanctions Including Attorney Fees Under IRCP 37(b)

Memorandum Reply

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in Eagle, Idaho, EVAN SKINNER, an individual residing in Montpelier, Idaho, RYAN OLSEN, an individual residing in Georgetown, Idaho, EXIT REALTY OF BEAR LAKE, LLC, an Idaho Limited Liability Company, JOHN DOES I-X,

Third Party Defendants.

STATE OF IDAHO)
) ss
County of Bonneville)

I, Nathan M. Olsen, do solemnly swear (or affirm) that the testimony given in this sworn statement is the truth, the whole truth, and nothing but the truth, that it is made on my personal knowledge, and that I would so testify in open court if called upon to do so.

- 1. On or about March 12, 2012, Defendant Northern Title Company of Idaho, Inc. (Northern Title) filed an "Amended Witness Disclosure and Third Party Plaintiff Witness Disclosure" naming only one expert witness, a "Craig Warren" as an expert Certified General Appraiser expected to "testify concerning the appraisal value of the property." (A true and correct copy is attached as "Exhibit A.") No other information was provided with regard to Mr. Warren pursuant to I.R.C.P. 26(b)(4)(A)(I), including any written report.
- 2. On or about May 2, 2012, I propounded written discovery to Northern Title, electing under I.R.C.P. 26(b)(4) to obtain information about Northern Title's expert by "interrogatory." I specifically requested the following:
 - (1) a complete statement of all opinions to be expressed and the basis and reasons therefor; (2) the data or other information considered by the witness in forming

^{2|}Affidavit of Nathan M. Olsen in Support of Motion to Exclude Defendant, Northern Title Company's Expert Witnesses and Testimony and for Sanctions Including Attorney Fees Under IRCP 37(b)

performandum Reply 1356

the opinions; (3) any exhibits to be used as a summary of or support for the opinions; (4) any qualifications of the witness, including a list of all publications authored by the witness within the preceding ten years; (5) the compensation to be paid for the testimony; and (6) a listing of any other cases in which the witness has testified as an expert at trial or by deposition within the preceding four years.

3. On June 4, 2012, Northern Title responded to this interrogatory as such:

<u>Defendant Northern Title has not yet obtained a statement of opinions from expert witnesses in this matter.</u>

The response then indicates that Northern Title retained two expert witnesses "Craig Warren" and "Werner Rosenbaum." The response provides absolutely no other information about these potential witnesses, including even the topic of their testimony. A true and correct copy of Northern Title's responses are attached as "Exhibit B" (see page 8 and 9).

- 4. Northern Title's principal owner and agent, Jay Davis, signed a sworn verification of the responses testifying that he "read the foregoing" responses, and "knows and understands the contents thereof" and that "the same are true of his knowledge." (See Page 19 Exhibit B)
- 5. According to the Court's "Order Setting Jury Trial" Northern Title's expert witness disclosures were due no later than April 15, 2012. Moreover, all discovery should have been completely responded to and supplemented by June 2, 2012.
- 6. On behalf of the Plaintiff, I timely disclosed two experts, escrow officer, Lenore Katri, and appraiser, Greg Kelley. Pursuant to a May 8, 2012 "Amended Notice of Taking Deposition of Gregory Kelley," Northern Title elected to discover facts known and opinions of Mr. Kelley by deposition, which was taken on June 14, 2012. (A true and correct copy of which is attached

³ Affidavit of Nathan M. Olsen in Support of Motion to Exclude Defendant, Northern Title Company's Expert Witnesses and Testimony and for Sanctions Including Attorney Fees Under IRCP 37(b)

as Exhibit C.) I have never received any interrogatory from Northern Title requesting any additional information, opinions, etc... from Mr. Kelley. Further, Northern Title's notice of deposition requests no such information or documents, but simply that Mr. Kelley provide his oral examination. About two days before the deposition, I received an e-mail request from Northern Title attorney, Aaron Bergman, requesting Mr. Kelley's appraisal report. Because we had not received such a request before, Mr. Kelley was anticipating to have that report prepared and submitted at the time of the deposition. Nevertheless, after receiving this request, I pressed Mr. Kelley to finish his report which we then provided a draft of one day prior to the deposition. Mr. Kelley was questioned for more than six hours about his qualifications, report and opinion by Defendants' attorneys.

- Northern Title attorney, Aaron Bergman, referring to a document that I had never seen nor had been provided. At least a couple of times I observed Mr. Flaig and Mr. Bergman glancing at the document, nudging each other and even snickering at one point. About four hours into the deposition, Mr. Bergman marked as an exhibit a document entitled "Uniform Agricultural Appraisal Report" prepared by "Craig Warren" for "Northern Title" on February 7, 2012. I had not been provided this document on that very moment (about 6:00 PM on June 14, 2012.) Mr. Kelley had also never seen this report. Over my strenuous objection, the Defendants' attorneys proceeded to question Mr. Kelley for another two hours in relation to the document. A true and correct copy of the cover page of this report is attached as Exhibit D.
- 8. As of the date of this affidavit, I have yet to be provided any additional information

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^{4|}Affidavit of Nathan M. Olsen in Support of Motion to Exclude Defendant, Northern Title Company's Expert Witnesses and Testimony and for Sanctions Including Attorney Fees Under IRCP 37(b)

whatsoever with regard to Northern Title's named experts. I have not received any background or qualifications of these individuals, no opinions (other than the alleged "appraisal report" prepared several months ago but not provided until June 14), facts or documents relied upon in such opinions, etc...

- 9. In some fashion or another, Northern Title and its attorneys have been involved in this case since March of 2010. Stephens initially filed a 3rd party claim against Northern Title that was withdrawn. However, Northern Title's attorneys appeared as "co-counsel" for Stephens (in actuality was merely a disguise to represent Northern Title's own interest). The Plaintiff amended his complaint in June of 2011 to add Northern Title as a Defendant.
- 10. To date, I have incurred no less than 14 hours of attorney time to address the Defendants' violations with regard to expert disclosures, and in particular, the surprise appraisal report provided at Mr. Kelley's June 14, 2012, deposition. These costs include the time spent defending Mr. Kelley's deposition and the aftermath including the preparing of this motion.

DATED this day of June, 2012.

Nathan M. Ölser

SUBSCRIBED AND SWORN to before me this 19 de

_ day of June, 2012.

SEAL OF IDAMO

Notary Public for State of Idaho

Residing at Highly

My Commission Expires: 0/0-27-2010

5|Affidavit of Nathan M. Olsen in Support of Motion to Exclude Defendant, Northern Title Company's Expert Witnesses and Testimony and for Sanctions Including Attorney Fees Under IRCP 37(b)

Memorandum Reply

CERTIFICATE OF SERVICE

I hereby certify that I am a duly licensed attorney in the State of Idaho, with my office in
Idaho Falls, Idaho, and that on the day of June, 2012, I served a true and correct copy of
the foregoing document on the persons listed below by first class mail, with the correct postage
thereon, or by causing the same to be delivered in accordance with Rule 5(b), I.R.C.P.

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Method of Service:
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Attorneys for Roger L. Stephens
(/) mail () hand () fax () email Attorneys for Northern Title Company
() mail () hand () fax () email

Attorneys for Dorothy Julian, Evan, Skinners, Ryan Olsen, and Exit Realty, of Bear Lake, LLC

() mail () hand () fax courtes chamber's copy

Nathan M. Olsen

6|Affidavit of Nathan M. Olsen in Support of Motion to Exclude Defendant, Northern Title Company's Expert Witnesses and Testimony and for Sanctions Including Attorney Fees Under IRCP 37(b)

Memorandum Reply 1360

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BEAR LAKE

STEVEN CUMMINGS, an individual)	
residing in Montana,)	
Plaintiff,)	
vs.)	Case No. CV-2009-183
ROGER L. STEPHENS, an individual)	
residing in Providence, Utah,)	DEPOSITION OF
NORTHERN TITLE COMPANY OF IDAHO,)	LENORE KATRI
INC., and Idaho Corporation, JOHN)	JUNE 14, 2012
DOES I-X,	.)	
Defendants.)	
(Caption continued to next page)		

REPORTED BY:

TIFFANY FISHER, CSR No. 979, RPR Notary Public

Lenore Katri 6/14/2012

1	Q.	Do you work directly in the title department
2	now?	
3	Α.	No.
4	Q.	Are there any special books or publications
5	that you'	ve read that deal with being an escrow officer?
6	Α.	Over the years, there have been a few, but not
7	very many	•
8	Q.	Can you recall what those were?
9	Α.	Hmm-um.
.0	Q.	Can you recall what the topics of those were?
1	Α.	Just general escrow, what happens in an
2	escrow, w	hat you do, your function.
3	Q.	So is it a relatively-general layout of what
4	an escrow	does?
5	Α.	Yes.
6	Q.	Did you read any publications or any kind of
7	instructi	on booklets on title insurance agents? Not
8	agents.	
9		What would you use as the correct term for a
0	title ins	urance officer?
1	А.	A title officer.
2	Q.	Thank you. I'm glad you clarified it for me
3	because I	feel like I could have been confusing you.
4	Α.	No.
5	Q.	Have you read any kind of training or booklets

208-345-9611 Memorandum Reply

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about escrow in general?

Lenore Katri 6/14/2012

1	that she has relied on. And we'll mark it as exhibit
2	the last exhibit.
3	MR. OLSEN: Maybe we'll do it I think we've
4	discussed before that this whole binder was submitted.
5	MR. BERGMAN: Right. I know it has been
6	submitted. But I aim to be able to look back and see
7	what we're talking about in this deposition.
8	MR. OLSEN: All right.
9	MR. FLAIG: Don't you want that other
10	loose-leaf stuff too?
11	MR. BERGMAN: Yeah, the whole thing. I'll
12	have this No. 3 and then this loose-leaf stuff be No. 4.
13	MR. OLSEN: Okay.
14	Q. (BY MR. BERGMAN) So the stuff that we're
15	going to be marking as No. 4, you received before?
16	A. This?
17	Q. Yes.
18	A. Yes.
19	Q. So, just for the record, the documents that
20	you received earlier, when did you receive these, do you
21	know?
22	A. Maybe 30 days ago.
23	Q. Okay. So about a month ago.
24	And then this binder that will be marked as
25	Exhibit No. 3 you received last Tuesday?

Lenore Katri 6/14/2012

1	A. Yes.
2	(Deposition Exhibit Nos. 3 and 4 were marked.)
3	Q. Do you recall ever looking at that Exhibit
4	No. 35?
5	A. I'm pretty sure it's in this binder. If I
6	looked at it, I just skimmed through it because I didn't
7	have time.
8	Q. So it wouldn't be something you used to
9	formulate your opinion today?
10	A. No.
11	MR. OLSEN: Counsel, I'm going to say that I'm
12	going to need to make a copy of this because I think
13	this is my original copy of this subpoena. I probably
14	have a copy of this, but I want to make sure I have one
15	before I so I guess we can
16	MR. BERGMAN: We can make a copy at the end.
17	MR. OLSEN: A copy at the break. Okay.
18	MR. BERGMAN: I just ask on the record that it
19	be preserved as it is now.
20	MR. OLSEN: Um-hmm.
21	Q. (BY MR. BERGMAN) I'm going to hand you what
22	has been previously marked as Exhibit No. 42.
23	Have you ever seen this document before?
24	A. Yes.
25	Q. And when do you recall reviewing that

Lenore Katri 6/14/2012

1	you've been employed in the past; correct?
2	A. Correct.
3	Q. What sorts of training in Idaho law regarding
4	title officer duties, procedures, and standards have you
5	received?
6	A. Title officer?
7	Q. Yeah. If you were a title officer, you get
8	certain training on the laws of Idaho and procedures and
9	duties and that sort of thing.
10	What specific training have you had in that?
11	A. Well, I'm not a title officer, so I wouldn't
12	do any training on title officer.
13	Q. Okay. And just one other thing too.
14	You mentioned that case that you were involved
15	in the past. I don't know how to say it.
16	A. Rencher.
17	Q. When was that? What year?
18	A. I don't remember.
19	Q. Ten years ago, did you say?
20	A. Yeah, somewhere around there.
21	Q. Was that in Idaho?
22	A. Yes.
23	Q. And what was it about?
24	A. Some personal property that the buyer claimed
25	that he was to receive in the transaction, and the

Lenore Katri 6/14/2012

1	A. Yes, they should.
2	MR. OLSEN: That's all I have.
3	MR. BERGMAN: I just have a few followup
4	questions.
5	FURTHER EXAMINATION
6	BY MR. BERGMAN:
7	Q. Ms. Katri, you testified that you are familiar
8	with the laws and regulations governing escrow officers;
9	correct?
10	A. Yes.
11	Q. Are you also just as familiar with the laws
12	and regulations governing title officers?
13	A. Probably not as much.
14	Q. And why not?
15	A. Because I'm an escrow officer, not a title
16	officer.
17	Q. Can you point to any specific laws that you've
18	relied on in forming your opinions today?
19	A. Like in a law book?
20	Q. Um-hmm.
21	A. No.
22	Q. Have you made an effort to do so up until this
23	point?
24	A. No.
25	Q. Looking at Lori Thornock's affidavit and

Nathan M. Olsen, Esq. PETERSEN MOSS HALL & OLSEN 485 "E" Street Idaho Falls, Idaho 83402 Telephone: (208) 523-4650 Facsimile: (208) 524-3391 ISB # 7373

Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BEAR LAKE

STEVEN CUMMINGS, an individual residing in Montana,) Case No. CV-2009-183
Plaintiff,))
vs.	DISCLOSURE OF WITNESSES
ROGER L. STEPHENS, an individual residing in Providence, Utah, JOHN DOES I-X,))))
Defendants.	

In addition to the fact and expert witnesses previously disclosed by the Plaintiff, Steven Cummings, Plaintiff by and through the undersigned counsel, hereby discloses the following expert witnesses that may be called at trial:

Lenore Katri President Mountain West Title & Escrow 390 W. Sunnyside Road, Idaho Falls, ID 83402

PLAINTIFF'S SUPPLEMENTAL DISCLOSURE OF WITNESSES - 1

Ms. Katri has been in the title & escrow industry for 32 years and has been the President of Mountain West Title & Escrow, an Idaho-licensed escrow agency, in Idaho Falls, Idaho since 2006.

Ms. Katri will testify with regard to the Idaho standards for title and escrow companies, as established by law, regulation and by long standing industry practices. She will provide her analysis of the conduct of the Defendant Northern Title Company, before during and after the subject real estate purchase closed. She will also discuss the standard procedures and document preparation that a title and escrow company is required to follow, and will analyze the actions taken by Northern Title, including the numerous anomalies. Her testimony will be based on the documents and testimony on the record obtained in this case. Issues that will be discussed in Ms. Katri's analysis and testimony include the following:

- Northern Title's duty to complete the transaction according to the explicit direction
 of the written purchase and sale agreement.
- Northern Title's duty to follow the instructions and obligations of the written closing and escrow agreement.
- Northern Title's duty to seek the written approval from both parties before changing any of the terms of the contract or deed.
- 4) Northern Title's duty to inform the buyer or insured of any property contained within the contract's legal description that does not belong to the seller, or is otherwise encumbered.
- 5) Northern Title's duty to record a warranty deed that is consistent with the written purchase agreement.

PLAINTIFF'S SUPPLEMENTAL DISCLOSURE OF WITNESSES - 2

- 6) Northern Title's duty to not modify a warranty deed after it has been recorded, without explicit authorization from both buyer and seller.
- 7) That the modifications by Northern Title made to the deed cannot be considered in any way, shape or form as merely correcting a "scriveners error."
- Whether it is appropriate to issue a title policy more than eight months after the transaction has closed, including whether a title company justified in delaying that policy because it claims that it was waiting from instruction from buyer to deed the property to a trust.
- Whether it is appropriate for Northern Title to issue a title policy for a legal description that is different from the title commitment and the purchase and sale agreement, and after explicit internal direction to issue the policy according to the contract and title commitment.
- 10) Northern Title's duty to remain a neutral party as escrow and closing officer, and to disclose any actual or perceived conflicts of interest.
- Northern Title's fiduciary duty toward its insured, in particular after it has become aware of a potential claim.
- 12) Northern Title's duty not to delete or destroy records once it has become aware that there has been a claim.
- Northern Title's duty to properly respond to and remedy its insured when it has become aware that there is a defect in the property insured.

PLAINTIFF'S SUPPLEMENTAL DISCLOSURE OF WITNESSES - 3

Any and all relevant issues with regard to her expertise as it relates to the conduct 14) of Northern Title, including any additional issues that may be learned through discovery.

Ms. Katri has not previously testified as an expert witness. She will be compensated \$50 per hour for her time.

Gregory Kelley Kelley Real Estate Appraisers 520 W 15th St # 100 Idaho Falls, ID 83402

Mr. Kelley replaces Mr. Linford who was previously disclosed. Mr. Linford is not available for the rescheduled trial. Mr. Kelley will testify as to the present and future value of the subject property, and its diminished value resulting from the exclusion of the east side. His analysis will include a valuation of the property as a whole, including the acreage on the east side, compared to its diminished value as a whole without the west side acreage. He will also testify as to the value of the excluded west side property by itself. His analysis may also include valuation of portions of the property that was part of the purchase and sale agreement that was conveyed to Mr. Cummings that in fact was owned by different parties than the seller. Mr. Kelley's testimony will be based on his appraisal and evaluation of the property, a written report of which he is in the process of preparing and which will be available mid to late April. He will review pertinent materials, i.e. the various legal descriptions and any other relevant records to his analysis.

Mr. Kelley's qualifications and experience are attached and incorporated herein as exhibit "A." He will be paid \$3,500 for the appraisal and \$125 per hour for testimony. He has not testified in a case in the last four years.

PLAINTIFF'S SUPPLEMENTAL DISCLOSURE OF WITNESSES - 4

Plaintiff reserves the right to further supplement this disclosure for the calling of rebuttal witnesses, or to address issues yet unknown that will be learned through discovery and further reserves the right to call any witness, expert or otherwise, designated or called by Defendants and/or Third Party Defendants.

DATED this 13th day of March, 2012.

PETERSEN MOSS HALLA & OLSEN

Nathan M. Olsen

PLAINTIFF'S SUPPLEMENTAL DISCLOSURE OF WITNESSES - 5

CERTIFICATE OF SERVICE

I hereby certify that I am a duly licensed attorney in the State of Idaho, with my office in Idaho Falls, Idaho, and that on the 13th day of March, 2012, I served a true and correct copy of the foregoing document on the persons listed below by first class mail, with the correct postage thereon, or by causing the same to be delivered in accordance with Rule 5(b), I.R.C.P.

Persons Served:

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Honorable David C, Nye P.O. Box 4165 Pocatello, Idaho 83205 FAX: (208) 236-7418

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Attorneys for Northern Title Company

() mail () hand () fax

Attorneys for Dorothy Julian, Evan Skinner,Ryan Olsen, and Exit Realty of Bear Lake, LLC

() mail () hand (Y) fax courtesy chamber's copy

Nathan M. Olsen

PLAINTIFF'S SUPPLEMENTAL DISCLOSURE OF WITNESSES - 6

QUALIFICATIONS OF THE APPRAISER

GREGORY G. KELLEY

Idaho Certified General Appraiser: #32 Wyoming Certified General Real Estate Appraiser: #369 Past President, Idaho/Utah Chapter, ASFMRA 2008

GENERAL EDUCATION:

Shelley High School, Shelley, Idaho Brigham Young University, Provo, Utah Utah Technical College, Provo, Utah

WORK HISTORY:

Construction Coordinator, Three Fountains of Idaho Falls - 1976-1978
Self Employed; Building Contractor - 1977-1980
Administrator; OHC Dental Group - 1980-1985
Appraiser - Kelley Real Estate Appraisers, Inc. - 1985-Present

APPRAISAL EDUCATION & TRAINING:

Residential Appraisal Course; EIVTS, Idaho Falls 1977 Report Writing Seminar; Bozeman, Montana ASFMRA 1985 Appraisal Course; University of Oklahoma, 1986 AIREA # 1A-1 Appraisal Course; University of Oklahoma, 1986 AIREA # 1A-2 Right-of-Way Training; Idaho Transportation Dept. Boise, Idaho - 1986 Mathematics of Finance Seminar, Twin Falls, ID ASFMRA 1988 Appraisal Course; Phoenix, Arizona, ASFMRA # A-20, 1988 Sales Analysis Seminar, Idaho Falls, ID ASFMRA, 1989 Standards of Professional Practice & Ethics, AIREA, Boise, Idaho 1990 Appraisal Course: Wichita, Kansas, ASFMRA # A-30, 1991 Certification School, Burley, ID, ASFMRA, # A-45, April 1991 Idaho Certified General Appraiser Exam, CGA # 32, June 1991 Highest and Best Use Seminar; Boise, Idaho, ASFMRA, January 1993 FIRREA Update - August 1994, Various Appraisal Seminars Standards & Ethics, ASFMRA, Jackpot, NV, May 95 Rural Residential Appraisal Seminar, Jackpot, NV ASFMRA, May 1997 Conservation Easement Seminar, Denver, CO, ASFMRA, November 1998 Federal Land Exchange & Acquisition, Nashville, TN, ASFMRA, November 2000 Income Approach, Discounting & Leasing, Jackpot, NV ASFMRA, May 2003 Appraising Land in Transition Seminar, Jackpot NV ASFMRA, May 2004 USPAP Update Course, Idaho Falls, ID ASFMRA, January 2005 Water Rights Seminar, Idaho Falls, ID; ID/UT Chapter ASFMRA, January 2005 Livestock Ranch Appraisal Seminar, Jackpot, NV ASFMRA, May 2005 Various Current Appraisal Topic Seminar, Boise, ID; ID/UT ASFMRA, January 2006 USPAP Update Course, Twin Falls, ID ASFMRA, January 2006





Code of Ethics. Twin Falls, ID ASFMRA, January 2006 Understanding Conservation Easements, Atlanta, GA ASFMRA, February 2007 Government Appraisal Seminar, Atlanta, GA ASFMRA, February 2007 Recreational Properties Seminar, Atlanta, GA ASFMRA, February 2007 2008 Appraisal Requirements, Atlanta, GA ASFMRA, February 2007 Understanding the Next Farm Bill, Atlanta, GA ASFMRA, February 2007 Mining Seminar, Jackpot, NV ASFMRA, May 2007 Timber Seminar, Jackpot, NV ASFMRA, May 2007 Yellow Book Seminar, Boise, ID Appraisal Institute, October 2007 1031 Exchange Seminar, Salt Lake City, UT, Realtors Land Institute, January 2008 Data Analysis Seminar, Jackpot, NV ASFMRA, May 2008 Cost Estimating Seminar, Jackpot, NV ASFMRA, May 2008 USPAP Update Course, Idaho Falls, ID; ASFMRA, January 2009 Various Current Appraisal Topic Seminar, Idaho Falls, ID; ASFMRA, January 2009 Wind Power & Conservation Easement Seminars, Boise, ID; ASFMRA, January 2010 USPAP Update Course, Las Vegas, NV; Appraisal Institute, January 2011 Appraisal of Nursing Home Facilities; On-line Course; Appraisal Institute, April 2011 USPAP Update Course, Logan, UT; ASFMRA, January 2012

APPRAISAL ASSIGNMENTS INCLUDE THE FOLLOWING CLIENTS:

Attorneys Major Lending Institutions Accountants Transfer Companies Major Oil Companies The Nature Conservancy City of Idaho Falls City of Pocatello City of Driggs Idaho Dept of Fish & Game Idaho State Land Dept. Idaho Transportation Dept. Bureau of Land Management Bureau of Reclamation Small Business Administration Internal Revenue Service U.S. Forest Service Farmers Home Administration F.D.I.C. Resolution Trust Corporation

U.S. Army Corps of Engineers

Utah Power and Light

Banks and Insurance Companies

Idaho Dept. Parks & Recreation

Teton Regional Land Trust Union Pacific Railroad Various other government agencies, companies and individuals

SIXTH AUDICIAL DISTRICT BEAR LAND COUNTY, MAD

2012 JUL 16 AM 10: 49

KERRY HADDOCK, CLERK

DEPUTY_____CASE NO

Brad H. Bearnson (I.S.B. 7086)
Aaron K. Bergman (I.S.B. 8878)
BEARNSON & CALDWELL, LLC
399 North Main, Suite 270
Logan, Utah 84321
bbearnson@bearnsonlaw.com
Attorneys for Defendant Northern Title

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BEAR LAKE

STEVEN CUMMINGS, an individual residing in Montana,) Case No. CV-2009-183
Plaintiff,))
Vs.)
ROGER L. STEPHENS, an individual residing in Providence, Utah, NORTHERN TITLE COMPANY OF IDAHO, INC., an Idaho Corporation, JOHN DOES I-X.)) REPLY FOR NORTHERN TITLE'S) SECOND MOTION IN LIMINE &) REQUEST TO FILE OVER-LENGTH REPLY BRIEF
Defendants.)))
ROGER L. STEPHENS, an individual,))
Third Party Plaintiff, vs.)))
DOROTHY JULIAN, an individual residing in Eagle, Idaho,)))
Third Party Defendant.	,))

COMES NOW Defendant NORTHERN TITLE COMPANY OF IDAHO, INC.,

(hereinafter "Defendant"), through counsel of Bearnson & Caldwell, and hereby makes this Reply for Northern Title's Second *Motion in Limine*.

Reply for Northern Title's Second Motion in Limine Case No. CV-09-183 Page 1 I. NORTHERN TITLE'S MOTION IN LIMINE IS PROPERLY PLED, WHERE A MISTAKE HAS OCCURRED AND THE SCOPE AND PURPOSE OF PAROLE EVIDENCE IS A MATTER CONSIDERED BEFORE TRIAL.

First, Defendant Northern Title has standing to raise the issue of parole evidence on the warranty deed and thereby the Real Estate Purchase Contract ("REPC"). The exact intent of the REPC is a critical component to Northern Title's case. Under the Escrow General Provisions, Northern Title was required to ensure that the documents conformed to the "Real Estate Purchase Contract governing this transaction *and its intent*." See *Escrow General Provisions* at ¶ 20, attached hereto as Exhibit "A." (emphasis added). Similarly, Plaintiff's complaint against Northern Title is based largely on the REPC and its true intent. See *Pls. Second Compl.* at ¶¶ 65-66, 88. Further, the true intent of the REPC is a critical defense to Northern Title – namely that where the corrected warranty deed was in line with the true intent of the REPC, Cummings could not have been damaged by Northern Title's actions in filing the corrected warranty deed.

When the appropriate legal standards are understood, Northern Title's Second Motion in Limine is not a Rule 56 motion, as Plaintiff mistakenly suggests. In this case, there has clearly been a mistake. However, a mistake need not be proven before the admissibility of parole evidence becomes appropriate. As the Idaho Court of Appeals states, the "common law exception to the parole evidence rule . . . allows the use of extrinsic evidence when a party alleges that, by reason of mistake, the written instrument does not memorialize the true agreement of the parties." *Posey v. Ford Motor Credit Co.*, 141 Idaho 477, 482, 111 P.3d 162, 167 (Idaho App. 2005) (emphasis added); See also *Belk v. Martin*, 136 Idaho 652, 657, 39 P.3d 592, 537 (Idaho 2001) (holding a written agreement is complete on its fact if "no . . . mistake being alleged").

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deed is proven through parole evidence at trial, reformation of a deed is warranted. See *West v. Bowen*, 127 Idaho 128, 130, 898 P.2d 59, 61 (1995) ("doctrine of merger does not apply where . . . there was a mistake"); see also *Belk v. Martin*, 136 Idaho 652, 657, 39 P.3d 592, 537 (Idaho 2001) (reforming rental lease on basis of unilateral mistake).

In Northern Title's *Memorandum in Support of Second Motion in Limine*, several facts are laid out for the Court's convenience. Because of this, Plaintiff construes Defendant's arguments as one seeking summary judgment under Rule 56. This, however, is not the case. As is well understood, the defendant of any case, absent a counterclaim, does not "allege" facts in a complaint against the plaintiff. Therefore, the allegations must be made elsewhere. Here, Northern Title has raised these allegations, and supported it by the extensive record of this case. Based on these allegations of supported fact, the appropriateness of parole evidence is patent.

Just as an example, two different Real Estate Purchase and Sale Agreements are found within the record, both different, both having been faxed to Plaintiff Cummings. See Julian to Cummings REPC, attached hereto as Exhibit "B"; see also Skinner to Cummings REPC, attached hereto as Exhibit "C." Oddly, the REPC faxed to Cummings from Julian contains no legal description, and is the only REPC signed by Three Bar Ranches. See Ex. "B." Similarly odd, the REPC faxed from Skinner never has and never will contain the signature of the seller, Roger Stephens. See Ex. "C." The REPC provided to Cummings' courtesy 1031 closing office was indeed that same REPC never signed by the seller Roger Stephens. See Closing REPC, attached hereto as Exhibit "D" (this document was obtained by subpoena form the 1031 exchange office).

To this date, the only REPC signed by Three Bar Ranches is that REPC attached hereto as Exhibit "B," being originally faxed between Julian and Cummings. Again, this REPC contains

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no legal description. In his affidavit, Steven Cummings states that he received a more complete REPC from Evan Skinner. See Northern Title's Mem. in Support 2nd Mot. Limine, Ex. "T," ¶ 5. This more "complete" REPC is the same as that attached hereto as Exhibit "B." as Cummings verifies in his deposition he relied on. See Cummings Depo., 80:20-82:19 attached hereto as Exhibit "E." Again, this more "complete" REPC that Cummings' avers he was relying on contains only his initials and signature, and contains not a single initial or signature by Three Bar Ranches. See Ex. "C."

Therefore, the record shows there is no legal description that Cummings can contractually rely on in the REPC, and on top of that, both the seller Mr. Stephens, all of the Realtors and the Title Company understood the sale to include only property west of Highway 30. This fact is supported by numerous affidavits filed in Northern Title's Memorandum in Support of Second Motion in Limine. Now obviously, Cummings disputes these facts. But that does not bar the appropriateness of parole evidence on the basis of a mistake. Parole evidence rarely if ever becomes an issue without a factual dispute. Therefore, Northern Title's Second Motion in Limine merely provides facts to assist the Court in determining a properly alleged mistake has arisen in the deed, and therefore parole evidence is warranted. These supported facts, contrary to Plaintiff's allegations, have all previously been produced. See Aaron Bergman Affidavit, attached hereto as Exhibit "F."

Where a mistake has been appropriately alleged and even supported by the record, the Court should allow parole evidence to discover the true intent of the parties. However, just because parole evidence is admissible for one purpose, it does not follow that parole evidence is open for every purpose.

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II. THE DUTIES OF NORTHERN TITLE AS AN ESCROW AGENT SHOULD BE APPROPRIATELY LIMITED TO THOSE FOUND IN THE CONTRACT.

The Court should limit the testimony arguments presented regarding Northern Title's duties as an escrow agent to those found within the contract. This concern became first apparent during the deposition of Plaintiff's expert, Lenore Katri, wherein she testified of duties and obligations that were either not found in the written agreement between he parties, or were actually directly contrary to the written agreement. Such testimony should not be allowed, as courts have strictly limited an escrow agent's duties to those found expressly in the contract. See e.g. *Foreman*, 83 Idaho at 486; see also *Barron*, 97 Idaho at 311-312, 543, P.2d at 864-865.

Plaintiff argues that on one hand Northern Title's duties were limited by contract, but on the other, Plaintiff is required to comply with the requirements and regulations set forth in the Idaho Escrow Act. In support of such, Plaintiff cites a few random cases that have nothing to do with escrows or the creation of an affirmative cause of action under statute. Rather, each case involves an "illegal" contract found entirely void by the court. See *Pines Grazing Ass'n v. Flying Joseph Ranch, LLC*, 151 Idaho 924, 927-930, 265 P.3d 1136, 1139-1142 (Idaho 2011) (court determines oral agreement is illegal under the Federal Sherman Act prohibiting restraints on trade and commerce); see also *Taylor v. AIA*, 151 Idaho 552, 564-565, 261 P.3d 829 (Idaho 2011) (court finds stock redemption illegal without earned surplus or shareholder approval); see also *Quiring v. Quiring*, 30 Idaho 560, 566-567, 944 P.2d 695, 701-702 (Idaho 1997) (court finds quitclaim deed illegal were spouse prompts signature by promising husband not to report sexual misconduct). Plaintiff then misquotes Idaho Code section 30-931, arguing this provision gives Plaintiff a right to its claims under the Act, where in reality, the provision merely states the Act does not preclude

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already existing claims found elsewhere.

While difficult to discern, Plaintiff's argument appears to be that the duties and obligations under the Idaho Escrow Act should be raised in testimony, because any provisions in the Escrow General Provisions that states otherwise are "illegal." Plaintiff's argument is fatally flawed. As pointed out in Northern Title's *Memorandum in Support of Second Motion in Limine*, the Idaho Legislature has expressly excluded Northern Title from the Idaho Escrow Act. Under section 30-905, the Idaho Legislature has declared that the "requirements of this chapter do not apply to . . . Title insurance companies having a valid certificate of authority, and title insurance agents having a valid license as a title insurance agent, issued by the Idaho department of insurance." I.C. 30-905(3). Northern Title has only brought claims against Northern Title, and none of its individual agents. Northern Title has already supplied the Court with certificates of authority, evidencing Northern Title's exclusion from the Act. See *Northern Title's Mem. in Support of 2nd Mot. Limine*, Ex. "V."

Where the duties and obligations of Northern Title are governed strictly by contract, and where the Idaho Escrow Act is inapplicable, the testimony and arguments provided at trial must be limited to those duties and obligations contained within the actual General Escrow Provisions and/or instructions received in accordance therewith.

III. PLAINTIFF CANNOT RELY ON THE TITLE COMMITMENTS ISSUED TO THREE BAR RANCHES AS A BASIS FOR HIS OWNER'S POLICY OF TITLE INSURANCE WITH NORTHERN TITLE.

As Cummings points out, his claims against Northern Title in regards to title insurance are founded in contract. Therefore, the law of contracts applies. Cummings does not seek a mere reformation of an existing contract. Rather, Cummings argues that the title commitments issued

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to Three Bar Ranches were actually intended for him, and as such, he can rely on the title commitments to change the terms of his Owner's Policy of Title Insurance. Where Cummings seeks to transpose a previous title commitment contract, made to an entirely different person, for his own benefit, Cummings must prove his case under the doctrine of novation.

Novation is not mere reformation, but is the "act of substituting . . . an original party with a new party." *Black's Law Dictionary*, 496 (3d ed. 2001). While parties may consent to an assignment, "consent to an assignment is not enough." *Warm Springs Development Associates*, *Ltd. Partnership v. Burrows*, 120 Idaho 280, 284, 815 P.2d 478, 482 (Idaho App. 1991). Also, it is insufficient for a party to a contract for "x" to merely act like the contract was made for "y." *Independent School Dist., Call A, No. 1, in Cassida County, v. Porter*, 228 P. 253, 253-257 (Idaho 1924). In Idaho, novation must be assented to by all parties. *Id.* at 255-256 (1924); see also First Nat. Bank in Evanston v. Sims, 78 Idaho 286, 290 (Idaho 1956); see also *Heckman v. Boise Valley Livestock Commission Co.*, 92 Idaho 862, 864, 852 P.2d 359, 361 (Idaho 1969). Further, novation must be "clearly established" and "express." *Warm Springs Development*, 120 Idaho 280, 284, 815 P.2d 478, 482 (Idaho App. 1991).

Here, the express provisions of the Title Commitments limit those commitments to Three Bar Ranches. See *Northern Title's Mem. Supp. 2nd Mot. Limine*, Ex. I and J. In addition, the *Owner's Policy of Title Insurance* issued to Cummins contained a integration clause, excluding all prior agreements. *Id.* at Ex. "S," ¶ 15. Further, statute requires that each title insurance policy shall name the name of the insured and be executed as such by the insurer. See I.C.A. §§ 41-1815(1) and I.C.A. § 41-1819(1). Based on the previous cases cited by Cummings regarding illegal contracts due to violation of statute, the title commitments as to Cummings are also null and

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void per the Idaho Legislature.

If Cummings is to rely on title commitments never issued to him as a means to enforce his Owner's Policy of Title Insurance, then he must prove the elements of novation, which he has not. As such, the Court should not allow Cummings to use against Northern Title title commitments that were never expressly issued to him.

IV. CUMMINGS HAS MISQUOTED THE ESCROW GENERAL PROVISIONS; WHEN CORRECTLY QUOTED, THE PROVISION LIMITING LIABLITY IS CLEARLY APPLICABLE TO THIS ACTION.

Cumming cites to only a portion of the relevant provision to argue that Northern Title's contractual limitation on liability only extends to "an action in interpleader." See *Pl's. Mem. Opp.* to 2nd Mot. Limine, 4, 10 (July 10, 2012). In reality, this is not what the provision states at all:

If Escrow agent becomes aware of any conflicting demands or claims concerning this escrow, Escrow Agent shall have the right to discontinue all further acts on Escrow Agent's part until the conflict is resolved to Escrow Agent's satisfaction. Escrow Agent has the right at its option to file and [sic] action in interpleader requiring the parties to litigate their claims/rights. If such an action is filed, the parties jointly and severally agree (a) to pay Escrow Agent's reasonable attorney's fees, and (b) that Escrow Agent is fully released and discharged from all further obligations under the escrow. If an action is brought involving this escrow and/or Escrow Agent, the parties agree to indemnify and hold the Escrow Agent harmless against liabilities, damages and costs incurred by Escrow Agent (including reasonable attorney's fees and costs) except to the extent that such liabilities, damages and costs were caused by the gross negligence or willful misconduct of Escrow Agent.

Ex. "F," Escrow General Provisions at ¶ 17.

While the provision gives Northern Title the right to bring an action "in interpleader" to require the respective parties to litigate their claims, that portion of the provision unambiguously excludes claims brought directly against Northern Title, where the parties further agreed to fully

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indemnify and discharge Northern Title's duties if an action in interpleader is brought. On the other hand, the remainder of the provision makes clear that when an action is not brought between the parties (i.e. buyer and seller), but directly against Northern Title, that the parties waive all liability except that arising out of gross negligence/willful misconduct.

The provision limiting liability against Northern Title is acutely applicable to Plaintiff's action, wherein Plaintiff has brought no claims against Stephens on the basis of the escrow contract, but rather has brought claims directly against Northern Title. As such, Plaintiff should not be allowed to lower his legally and contractually heightened burden.

CONCLUSION

The existence of either a mutual or unilateral mistake has been alleged, and is apparent by facts produced from the record. As such, the Court should allow parole evidence to discover the true intent of the parties as to the Real Estate Purchase Contract. However, just because parole evidence is admissible on purpose does not mean that parole evidence is suddenly admissible for all purposes.

First, Northern Title's duties as Escrow Agent are governed strictly by contract. The Idaho Escrow Act is inapplicable, as Northern Title has been expressly excused from its provisions. Therefore, the testimony and arguments made against Northern Title must be limited to those duties and obligations contained within the actual General Escrow Provisions and/or instructions received in accordance therewith.

Second, while the title commitments are certainly relevant in proving the true intent of the REPC and in Defendants' defenses of mistake, Cummings cannot rely on those title commitments as a means to change the terms of his Owner's Policy of Title Insurance. The title commitments

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were never issued to Cummings, and by statute are unenforceable by Cummings. Where Cummings has failed to prove the elements of novation, the Court should not allow him to use against Northern Title title commitments never expressly issued to him.

Finally, when appropriately and completely quoted, the Escrow General Provisions properly heighten Cummings' burden against Northern Title in its capacities as escrow agent to gross negligence/willful misconduct.

DATED this 13th day of July, 2012.

BEARNSON & CALDWELL, LLC

Brad H. Bearnson

Aaron K. Bergman

Attorneys for Defendant Northern Title

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the	day of July, 2012, I served a true and correct copy
of the above and foregoing REPLY FOR NO	RTHERN TITLE'S SECOND MOTION IN
LIMINE AND REQUEST TO FILE OVER	-LENGTH REPLY BRIEF to the following
person(s) as follows:	
Nathan M. Olsen	[x] U. S. Mail/Postage Prepaid
Petersen Moss Hall & Olsen	[] Hand Delivery
485 "E" Street	[] Overnight Mail
Idaho Falls, Idaho 83402	[] Facsimile (208-524-3391)
	[x] Email (<u>Nathan@pmholaw.com</u>)
Randall C. Budge	[x] U.S. Mail/Postage Prepaid
Jason E. Flaig	[] Hand Delivery
RACINE, OLSON, NYE, BUDGE &	[] Overnight Mail
BAILEY, CHARTERED	[] Facsimile (435-752-6301)
P.O. Box 1391; 201 E. Center Street	[x] Email <u>rcb@racinelaw.net</u>
Pocatello, Idaho 83204-1391	ief@racinelaw.net

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ESCROW GENERAL PROVISIONS

This agreement governs the duties and obligations between Northern Title Company of Idaho (hereinafter "Escrow Agent") and the undersigned signatories, who are parties to the following transaction.

Order No.: NTBL-1183

Address: MONTEPLIER, ID

Buyer(s): STEVEN B. CUMMINGS,

Seller(s): ROGER L. STEPHENS TRUSTEE and BARBARA L. STEPHENS TRUSTEE TRUST

The Parties understand and acknowledge:

1. Escrow Agents Role

Subject to the terms of this agreement, Escrow Agent agrees to act as an escrow agent in closing the transaction described above. Escrow Agent is not the agent of any single party. Rather, Escrow Agent agrees to prepare documents, secure the execution of documents, record documents, disburse funds, and otherwise close the transaction in the accordance with the joint directions of the parties. Escrow Agent has no other duties or obligations. In particular, Escrow Agent does not give and has no duty to give legal or other advice to the parties.

2. Parties' Role

The parties authorize Escrow Agent to close the transaction, record documents, disburse funds, and otherwise act in accordance with the written Settlement Statement and any written or oral directions or agreements given to Escrow Agent by the parties or their representatives. The parties agree that Escrow Agent is entitled to act on the direction of the realtor, attorney or other person who has dealt with Escrow Agent on behalf of them in this transaction. If any party wishes to limit the authority of those who have dealt on their behalf with Escrow Agent, any such limitation must be contained in a writing that is delivered to Escrow Agents. The parties agree that they are not looking to Escrow Agent for legal or other advice, and that they had an opportunity to obtain such advice from persons other than those affiliated with Escrow Agent.

3. Closing Documents

The parties have been given an opportunity to review all documents at closing and to seek independent advice or counsel concerning those documents, if desired. The parties agree that the only representations of Escrow Agent upon which they are entitled to rely or act are those that are in writing and executed by Escrow Agent and that the parties are not entitled to act or rely on conflicting oral or written terms or directions given to Escrow Agent prior to closing. The parties' execution and delivery of documents at closing shall, as between Escrow Agent and the parties, constitute the parties' agreements and directions to Escrow Agent whether or not Escrow Agent is a party to the documents. The terms of this paragraph shall not affect the parties' rights between themselves.

4. Deposit of Funds, Recording & Disbursements

The undersigned BUYER and SELLER hereby approve the foregoing statement and authorize NORTHERN TITLE COMPANY OF IDAHO to complete the transaction in accordance herewith. The instruments may be delivered or recorded and funds disbursed. Escrow Agent shall place all funds received in escrow Into a federally insured depository account specifically designated as a trust account. Escrow Agent may maintain a general trust account and individual accounts for specific escrows, subject to any specific terms and conditions of any written agreement between Buyer, Seller, and Escrow Agent. Absent specific written direction from both Seller and Buyer, Escrow Agent shall, as agent for Buyer and Seller, determine the identity of the depository institution. Escrow Agent shall not be responsible for any loss of funds occurring as a result of failure of the institution in which funds have been deposited, so long as Escrow Agent complies with the foregoing provisions relating to the type of depository institutions and accounts to be used. Earnings on funds held in Escrow Agent's escrow trust account shall be owned by and periodically disbursed to Escrow Agent as additional consideration for services actually performed by Escrow Agent. Funds may be paid from trust accounts only in accordance with the terms and conditions of Buyer's and Seller's instructions to Escrow Agent. In the event that Escrow Agent initiates or is joined as a party to any litigation relating to this escrow, Buyer and Seller jointly and severally agree to pay all costs, expenses and attorney's fees incurred by Escrow Agent in such litigation. Escrow Agent shall be entitled, at it's option, to be paid such costs, expenses and the attorney's fees from the funds deposited by the party(ies) with Escrow Agent.

5. Disclosure of Possible Benefits to Escrow Agent

As a result of Escrow Agent maintaining it's general escrow accounts with the depositories, Escrow Agent may receive certain financial benefits such as an array of bank services, accommodations, loans or other business transactions from depositories ("collateral benefits"). All collateral benefits shall accrue to the sole benefit of Escrow Agent and Escrow Agent shall have obligation to account to the parties to this escrow for the value of any such collateral benefits.

6. Miscellaneous Fees

The Settlement Statement may prescribe that certain release or reconveyance fees are payable to Escrow Agent. These fees are payable to Escrow Agent to compensate it for facilitating and arranging for the reconveyance or release of the encumbrance in question and are payable in the amounts indicated irrespective of whether additional reconveyance fees or charges may have been paid or are payable to any other party and irrespective of any limitation on reconveyance or release fees that may be prescribed. Escrow Agent may incur certain additional costs of behalf of the parties for services performed by third party providers. The fees charged by Escrow Agent for such services may include a mark up over the direct cost of such services to reflect the averaging of direct, administrative and overhead charges of Escrow Agent for such services.

7. Prorations & Adjustments

The term "close of escrow" means the date on which documents are recorded. All pro-rations and/or adjustments shall be made as of the close of escrow based on a 30-day month, unless otherwise instructed in writing.

8. Contingency Periods

1Escrow Agent shall not be responsible for monitoring contingency time periods between the parties. The parties shall execute such documents as may be requested by Escrow Agent to confirm the status of any such periods.

9. Reports

As an accommodation, Escrow Agent may agree to transmit orders for Inspection, termite, disclosure and other reports if requested, in writing or orally, by the parties or their agents. Escrow Agent shall deliver copies of any such reports as directed. Escrow Agent is not responsible for reviewing such reports or advising the parties of the content of same.

10. Information from Affiliated Companies

Escrow Agent may provide the parties' information to and from it's affiliates in connection with the offering of products and services from these affiliates.

11. Commitment for Title Insurance; Recordation of Documents

The undersigned Buyer hereby acknowledges receipt of a copy of, and an opportunity to review, Commitment for Title Insurance referenced as Order No. NTBL-1183 (the "Commitment") obtained through Escrow Agent in the contemplation of the above transaction, and authorizes the title insurer to issue the policy of title insurance contemplated thereby, which policy shall contain the following numbered exceptions from coverage: 1-11; as shown on the Commitment in addition to any new encumbrances created in connection with this transaction. The undersigned Buyer and Seller affirm that the legal description appearing in the commitment is satisfactory, and authorize Escrow Agent to record documents delivered through escrow which contain said legal description(s) necessary or proper for the issuance of the requested title insurance policy(ies).

12. Personal Property Taxes

No examination, UCC search, insurance as to personal property and/or the payment of personal property taxes is required unless otherwise instructed in writing.

13. Real Property Taxes

The undersigned Buyer and Seller do hereby understand and agree that the proration for general property taxes as provided in the above referenced closing statements, was calculated by utilizing the general property taxes assessed for the year 2006. Accordingly, the Buyer(s) and Seller(s) do hereby hold Escrow Agent free and harmless from any liability or damages caused by an inaccurate proration for general property taxes assessed for the current year. Upon a determination of the assessed property taxes due for the current year, Buyer(s) and Seller(s) agree to make the proper proration adjustment as may required subsequent to closing.

14. Survey

The undersigned buyers and sellers hereby acknowledge that they have (chosen to/ chosen not to) have a survey completed on subject property. If not, the undersigned buyers and sellers affirm that the legal description on the closing documents of even date herewith is satisfactory, and the undersigned herein agree to hold NORTHERN TITLE COMPANY OF IDAHO and the undersigned Real Estate Company harmless as to any dispute resulting from not having a survey done at the time of the transaction.

15. Utilities and Water Rights

Escrow Agent shall not be responsible for the transfer of utilities. Escrow Agent shall not be responsible for the transfer of water rights or shares. The parties understand that they will have all utilities read and transferred as of the date of possession. Water shares and or rights are not being transferred in connection with this transaction.

Company: <u>BENNINGTON IRRIGATION COMPANY</u> Number of shares: 900 Company: <u>MONTPELIER IRRIGATION COMPANY</u> Number of shares: 100

• Buyer/Seller will transfer the water shares outside of closing and will not hold NORTHERN TITLE COMPANY OF IDAHO responsible for any shares transferred incorrectly.

Northern Title Company of Idaho has no knowledge of the fees and/or dues associated with the water rights. If you want any further information you need to contact the secretary of the water company.

16. Cancellation of Escrow

Any party desiring to cancel this escrow shall deliver written notice of cancellation to Escrow Agent. Within a reasonable time after receipt of such notice, Escrow Agent shall send by standard mail to the address on the escrow instructions, one copy of said notice to the other party(ies). Unless written objection to cancellation is delivered to Escrow Agent by a party within 10 days after date of mailing, Escrow Agent is authorized, at its option, to comply with the notice and terminate the escrow. If a written objection is received by Escrow Agent, Escrow Agent is authorized, at its option, to hold all funds and documents in escrow (subject to the funds held fee) and to take no other action until otherwise directed by either the parties' mutual written instructions or a final order of court of competent jurisdiction. If no action is taken on this escrow within 6 months after the closing date specified in the escrow instructions, Escrow Agent's obligations shall, at its option, terminate. Upon termination of this escrow, the parties shall pay all fees, charges and reimbursements due to Escrow Agent and all documents and remaining funds held in escrow shall be returned to the parties depositing same.

17. Conflicting Instructions & Disputes

If Escrow Agent becomes aware of any conflicting demands or claims concerning this escrow, Escrow Agent shall have the right to discontinue all further acts on Escrow Agent's part until the conflict is resolved to Escrow Agent's satisfaction. Escrow Agent has the right at its option to file and action in interpleader requiring the parties to litigate their claims/rights. If such an action is filed, the parties jointly and severally agree (a) to pay Escrow Agent's reasonable attorney's fees, and (b) that Escrow Agent is fully released and discharged from all further obligations under the escrow. If an action is brought involving this escrow and/or Escrow Agent, the parties agree to indemnify and hold the Escrow Agent harmless against liabilities, damages and costs incurred by Escrow Agent (including reasonable attorney's fees and costs) except to the extent that such liabilities, damages and costs were caused by the gross negligence or willful misconduct of Escrow Agent.

18. Usury

Escrow Agent is not to be concerned with usury as to any loans or encumbrances in this escrow and is hereby released of any responsibility and/or liability therefor.

19. Insurance Policies

In all matters relating to insurance, Escrow Agent may assume that each policy is in force and that the necessary premium has been paid. Escrow Agent is not responsible for obtaining fire, hazard or liability insurance, unless Escrow Agent has received specific written instructions to obtain such insurance prior to close of escrow from the parties or their respective lenders.

20. Compliance:

The undersigned hereby further agree, if required by closing agent, to cooperate and adjust clerical errors, and or further documentation which may be deemed necessary to comply with any Real Estate Purchase Contract governing this transaction and it's intent.

21. Copies of Documents; Authorization to Release

14. Survey

The undersigned buyers and sellers hereby acknowledge that they have (chosen to/chosen not to) have a survey completed on subject property. If not, the undersigned buyers and sellers affirm that the legal description on the closing documents of even date herewith is satisfactory, and the undersigned herein agree to hold NORTHERN TITLE COMPANY OF IDAHO and the undersigned Real Estate Company harmless as to any dispute resulting from not having a survey done at the time of the transaction.

15. Utilities and Water Rights

Escrow Agent shall not be responsible for the transfer of utilities. Escrow Agent shall not be responsible for the transfer of water rights or shares. The parties understand that they will have all utilities read and transferred as of the date of possession. Water shares and or rights are not being transferred in connection with this transaction.

Company: <u>BENNINGTON IRRIGATION COMPANY</u> Number of shares: <u>900</u> Company: <u>MONTPELIER IRRIGATION COMPANY</u> Number of shares: <u>100</u>

 Buyer/Seller will transfer the water shares outside of closing and will not hold NORTHERN TITLE COMPANY OF IDAHO responsible for any shares transferred incorrectly.

Northern Title Company of Idaho has no knowledge of the fees and/or dues associated with the water rights. If you want any further information you need to contact the secretary of the water company.

16. Cancellation of Escrow

Any party desiring to cancel this escrow shall deliver written notice of cancellation to Escrow Agent. Within a reasonable time after receipt of such notice, Escrow Agent shall send by standard mail to the address on the escrow instructions, one copy of said notice to the other party(ies). Unless written objection to cancellation is delivered to Escrow Agent by a party within 10 days after date of mailing, Escrow Agent is authorized, at its option, to comply with the notice and terminate the escrow. If a written objection is received by Escrow Agent, Escrow Agent is authorized, at its option, to hold all funds and documents in escrow (subject to the funds held fee) and to take no other action until otherwise directed by either the parties' mutual written instructions or a final order of court of competent jurisdiction. If on action is taken on this escrow within 6 months after the closing date specified in the escrow instructions, Escrow Agent's obligations shall, at its option, terminate. Upon termination of this escrow, the parties shall pay all fees, charges and reimbursements due to Escrow Agent and all documents and remaining funds held in escrow shall be returned to the parties depositing same.

17. Conflicting Instructions & Disputes

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18. Usury

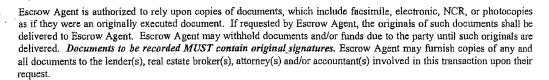
Escrow Agent is not to be concerned with usury as to any loans or encumbrances in this escrow and is hereby released of any responsibility and/or liability therefor.

19. Insurance Policies

In all matters relating to insurance, Escrow Agent may assume that each policy is in force and that the necessary premium has been paid. Escrow Agent is not responsible for obtaining fire, hazard or liability insurance, unless Escrow Agent has received specific written instructions to obtain such insurance prior to close of escrow from the parties or their respective lenders.

20. Compliance:

The undersigned hereby further agree, if required by closing agent, to cooperate and adjust clerical errors, and or further documentation which may be deemed necessary to comply with any Real Estate Purchase Contract governing this transaction and it's intent.



22. Tax Reporting, Withholding & Disclosure

The parties are advised to seek independent advice concerning the tax consequences of this transaction, including but not limited to, their withholding, reporting and disclosure obligations. Escrow Agent does not provide tax or legal advice and the parties agree to hold Escrow Agent harmless from any loss or damage that the parties may incur as a result of their failure to comply with federal and/or state tax laws. WITHHOLDING OBLIGATIONS ARE THE EXCLUSIVE OBLIGATIONS OF THE PARTIES. ESCROW AGENT IS NOT RESPONSIBLE TO PERFORM THESE OBLIGATIONS UNLESS ESCROW AGENT AGREES IN WRITING.

A. Taxpayer Identification Number Reporting

Federal law requires Escrow Agent to report Seller's social security number and/or tax identification number, forwarding address, and the gross sales price to the Internal Revenue Service ("IRS"). Escrow can not be closed nor any documents recorded until the information in provided and Seller certifies it's accuracy to Escrow Holder.

B. Federal Withholding & Reporting

Certain federal reporting and withholding requirements exist for real estate transactions where the seller (transferor) is a non-resident alien, a non-domestic corporation or partnership controlled by non-residents or non-resident corporations or partnerships.

C. Taxpayer Identification Disclosure

Parties to a residential real estate transaction involving seller-provided financing are required to furnish, disclose, and include taxpayer identification numbers in their tax returns. Escrow Agent is not required to transmit the taxpayer I.D. numbers to the IRS of the parties. Escrow Agent is authorized to release any party's taxpayer I.D. numbers to any other party upon receipt of a written request. The parties waive all rights of confidentiality regarding their taxpayer I.D. numbers and agree to hold Escrow Agent harmless against any fees, costs, or judgments incurred and/or awarded because of the release of taxpayer I.D. numbers.

23. Privacy Policy

The undersigned Buyer and Seller hereby acknowledge receipt of a copy of the Privacy Policy of Northern Title Company and Escrow Agent.

24. Legal Counsel

The undersigned acknowledge that they have the right to seek legal counsel and tax advice in connection with this transaction. I/we the undersigned real estate salesperson/broker have reviewed the foregoing statement and certify that the above mentioned statement is accurate accounting of the transaction(s) between buyer and seller herein.

I/We, the undersigned Real Estate Agents/Brokers have reviewed this statement and all other related closing documents including the HUD-1 Settlement Statement and certify that the documents are an accurate accounting of the transaction reflecting the agreements, by both Buyer and Seller, as stated in the Real Estate Purchase Contract.

Q

	Quan Strum
Listing Agent/Broker	Selling Agent/Broker
STEVEN B. CONSMITTINGS	
ROGER L. STEPHENS TRUSTEE	BARBARA L. STEPHENS TRUSTEE
"Recrour A cent"	

ex. The Thomask

21. Copies of Documents; Authorization to Release

Escrow Agent is authorized to rely upon copies of documents, which include facsimile, electronic, NCR, or photocopies as if they were an originally executed document. If requested by Escrow Agent, the originals of such documents shall be delivered to Escrow Agent. Escrow Agent may withhold documents and/or funds due to the party until such originals are delivered. *Documents to be recorded MUST contain original signatures*. Escrow Agent may furnish copies of any and all documents to the lender(s), real estate broker(s), attorney(s) and/or accountant(s) involved in this transaction upon their request.

22. Tax Reporting, Withholding & Disclosure

The parties are advised to seek independent advice concerning the tax consequences of this transaction, including but not limited to, their withholding, reporting and disclosure obligations. Escrow Agent does not provide tax or legal advice and the parties agree to hold Escrow Agent harmless from any loss or damage that the parties may incur as a result of their failure to comply with federal and/or state tax laws. WITHHOLDING OBLIGATIONS ARE THE EXCLUSIVE OBLIGATIONS OF THE PARTIES.—ESCROW AGENT IS NOT RESPONSIBLE TO PERFORM THESE OBLIGATIONS UNLESS ESCROW AGENT AGREES IN WRITING.

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The undersigned acknowledge that they have the right to seek legal counsel and tax advice in connection with this transaction. I/we the undersigned real estate salesperson/broker have reviewed the foregoing statement and certify that the above mentioned statement is accurate accounting of the transaction(s) between buyer and seller herein.

I/We, the undersigned Real Estate Agents/Brokers have reviewed this statement and all other related closing documents including the HUD-I Settlement Statement and certify that the documents are an accurate accounting of the transaction reflecting the agreements, by both Buyer and Seller, as stated in the Real Estate Purchase Contract.

ker
L. Stephens

"Escrow Agent": NORTHERN TITLE COMPANY OF IDAHO



196 South 4th Street Montpeller, Idaho 83254

Office (208) 847-3200 Fax (208) 847-3203

	Facsimile Transmittal Sheet	
FROM:	DOT	
то;	Steve Cumings 7/26	
FAX NUMBEI	R 8017563150	, .
NUMBER OF	PAGES (INCLUDING COVER)	
COMMENTS_	Stephen's Cont	ract



07-28-07; 12:18PM;



RE-21 REAL ESTATE PURCHASE AND SALE AGREEMENT THIS IS A LEGALLY BINDING CONTRACT, READ THE ENTIRE DOCUMENT INCLUDING ANY ATTACHMENTS. IF YOU HAVE ANY QUESTIONS, CONSULT YOUR ATTORNEY AND/OR ACCOUNTANT BEFORE SIGNING.

1 2	ID# ES070267 B DATE 7-20 J.
8	LISTING AGENCY EXT REGISTER OF BL Office Phone # Fax#
4	Listing Agent OroThy Rods E-Mell Phone #
5	SELLING AGENCY EXIT Realty of BL Office Phone # \$27-3950 Fax # 847-3103
6 7	Selling Agent Eulan Spans E-Mail Phone#
8	1 BIVED. There Ra Const. The Third
	"BUYER") agrees to purchase, and life understoned SELLER agrees to sell the following described real estate hereinafter referred to as "PREMISES"
10 11	COMMONLY KNOWN AS 572 hand Canada City man Tactive Beau Lake County, ID, Zip legally described as: Sep Andrea dem Ord
12	
13	OR Legal Description Attached as addendum #(Addendum must accompany original offer.)
15 16	2. \$ 700,000) PURCHASE PRICE: Server Aun Aire (Theresand DOLLARS, payable upon the following TERMS AND CONDITIONS (not including closing costs):
17	
19	3. FINANCIAL TERMS: Note: A+C+D+E must add up to total purchase price.
20 21	\$ 1001 - (A). EARNEST MONEY: BLYER hereby deposits One Thousand DOLLARS as Earnest Money evidenced by: Cash Operaonal check Cashler's check Onote (due date):
22	after and a receipt is hereby acknowledged. Earnest Money to be deposited
23 24	In trust account Queen receipt, or Queen acceptance by all parties and shall be held by. Q Listing Broker Q Selling Broker Q other
25 28	
27	(B), ALL CASH OFFER: █ NO ☐ YES If this is an all cash offer do not complete lines 32 through 61, fill blanks with "0" (ZERO.) IF CASH OFFER, BUYER'S OBLIGATION TO CLOSE SHALL NOT BE SUBJECT TO ANY FINANCIAL CONTINGENCY.
28 29	BUYER agrees to provide SELLER withinbusiness days from the date of acceptance of this agreement by all parties, evidence of
30	sufficient funds and/or proceeds necessary to close transaction. Acceptable documentation includes, but is not limited to, a copy of a recent bank or financial statement or contract(s) for the sale of BUYER'S current residence or other property to be sold.
31 32	\$ (C) NEW I DAN DEDICEEDS This Agreement is confined than DI VED obtaining the following financing:
38	☐ FIRST LOAN of \$
35	Cother BUYER shall pay no more than point(s) plus origination fee if any. SELLER shall pay no more than point(s).
38 37	Any reduction in points shall first accrue to the benefit of the BUYER SELLER Divided Equally N/A.
85	SECOND LOAN of \$ with interest not to exceed % for a period of year(s) et. Fixed Rafe
29 40	OtherBUYER shall pay no more thanpoint(s) plus origination fee if any. SELLER shall pay no more thanpoint(s). Any reduction in points shall first accrue to the benefit of theBUYER SELLER Divided Equally N/A.
41 42	•
43	LOAN APPLICATION BUYER has applied shall apply for such loan(s) withinbusiness day(s) of SELLER'S acceptance. Withinbusiness days of final acceptance of all parties, BUYER agrees to furnish SELLER with a written confirmation showing lender approval of
44 45	credit report, income verification, debt.ratios in a manner acceptable to the SELLER(S) and subject only to satisfactory appraisal and final lender underwriting. If such written confirmation is not received by SELLER(S) within the strict time ellotted, SELLER(S) may at their option cancel this
45	agreement by notifying BUYER(S) in writing of such cancellation withinbusiness day(s) after written confirmation was required. If SELLER does
47 48	not cancel within the strict time period specified as set forth herein, SELLER shall be deemed to have accepted such written confirmation of lender approval
49	and shall be deemed to have elected to proceed with the transaction. SELLER'S approval shall not be unreasonably withheld. If an appraisal is required by lender, the property must appraise at not less than purchase price or BUYER'S Earnest Money may be returned at BUYER'S request. BUYER
6D 61	may also apply for a loan with different conditions and costs and close transaction provided all other terms and conditions of this Agraement are
62	fulfilled, and the new loan does not increase the costs or requirements to the SELLER FHA IVA: If applicable, it is expressly agreed that not withstanding any other provisions of this contract, BUYER shall not be obligated to complete the
53 54	purchase of the property described herein or to incur any penalty or forfeiture of Earnest Money deposits or otherwise unless EUYER has been given in
55	accordance with HUD/FHA or VA requirements a written statement by the Federal Housing Commissioner, Veterans Administration or a Direct Endoraement lender setting forth the appraised value of the property of not less than the sales price as stated in the contract. SELLER egrees to pay fees
516 57	required by FHA pg VA
50 50	*SENTENCE (D). ADDITIONAL FINANCIAL TERMS:
60	Additional financial terms are specified under the heading "OTHER TERMS AND/OR CONDITIONS" (Section 4). Additional financial terms are contained in a FINANCING ADDENDUM of same date, attached hereto, signed by both parties.
61	Line E below is the total of the Purchase Price minus Lines A, C, and D. Only use numbers in these lines.
62 63	\$ 202 000 (a). APPROXIMATE FUNDS DUE FROM BUYERS AT CLOSING (Not including closing costs): Cash at closing to be paid by BUYER at closing in GOOD FUNDS, includes: cash, electronic transfer funds, certified check or cashier's check. NOTE: If any
84	of above loans being Assumed or taken "subject to", any net differences between the approximate balances and the actual balance of said loan(s)
85 86	shell be adjusted at closing of asorow in: Cash Other:
68 -	BUYER'S Initials (CA) () Data 7/82/17 SELLER'S Initials (MA) (AA) Data 7-5-07
0	This form is printed and distributed by the Idaho Association of REALTORSO, Inc. This form has been designed for and is provided only for use by real estate protessionals who are resmbare of the National Association of REALTORSO, USE BY ANY OTHER PERSON IS PROHIBITIED. Copyright Idaho Association of REALTORSO, Inc. All rights reserved.
F1	RE-21 RESIDENTIAL PURCHASE AND BALE AGREEMENT PAGE 1 of 8 JULY, 2008 EDITION

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	72 73.	RE-21 RESIDENTIAL PURCHASE AND SALE AGREEMENT PAGE 2 of 6 MULY, 2005 EDITION
, b.	74	PROPERTY ADDRESS: STEP hand Rauch How 30 IDH: \$5070207 B
7	78 77	4. OTHER TERMS AND/OR CONDITIONS: This Agreement is made subject to the following special terms, considerations end/or contingencies which must be satisfied prior to closing
	78	
	.70 ap	Tracking a all applicate oil + neurolly 100 Street of montpoler Indestru
	21	Tryphtree a all aboritable oil + missinal - 180 Shares of montpetien Fragette.
	82	CNODS M Stay with Lease For 2007 "
*	83	
	84	- report for not have surreyed Contingent upon Apparent ming in
	85 86	Budgers TO base opition TO DO a 1051 exchange TO Bayons appoint.
	87 88	5. ITEMS INCLUDED & EXCLUDED IN THIS SALE; All existing fixtures and fiftings that are attached to the property are INCLUDED IN THE PURCHASE
4	88	PRICE (unless excluded below), and shall be transferred free of liens. These include, but are not limited to, all attached floor coverings, attached television
	20	antermas, astellite dish and receiving equipment, attached plumbing, bathroom and lighting fixtures, window screens, screen doors, storm windows, storm doors,
	81 92	all window coverings, garage door opener(s) and transmitter(s), exterior trees, plants or shrubbery, water heating apparatus and fixtures, attached fixeplace
	83	equipment, awnings, ventitating, cooling and heating systems, all ranges, ovens, bulk in dishwashers, fuel tanks and krigation fixtures and equipment, all water systems, wells, springs, water, water rights, dishes and ditch rights, if any, that are appuritanant finereto that are now on or used in connection with the premises
•	34	and shall be included in the sale unless otherwise provided herein. BUYER should satisfy himself that the condition of the included leans is acceptable. It
	35 36	is agreed that any item included in this section is of nominal value less than \$100.
	37	(A). ADDITIONAL ITEMS SPECIFICALLY INCLUDED IN THIS SALE: Disp. 4386 . Troothy Tut.
	8	Magnisery, All trevillar in home That Seller well his To Leavel +
10		All additable what they of all hand thus.
10	1	(B). ITEMS SPECIFICALLY EXCLUDED IN THIS SALE:
103	3	
104		6. TITLE CONVEYANCE: This of SELLER is to be conveyed by warraniy dead, unless otherwise provided, and is to be marketable and insurable except for
101		rights reserved in federal patents, state or retiroad deeds, building or use restrictions, building and zoning regulations and ordinances of any governmental unit, and rights of way and essements established or of record. Liens, encumbrances or defects to be discharged by SELLER may be paid out of purchase money at
107		date of closing. No liens, enoumbrances or defects which are to be discharged or assumed by BUVER or to which tills is taken subject to, exist unless otherwise
101 101		specified in this Agreement.
110		7. TITLE INSURANCE: There may be types of title insurance coverages available other than those listed below and parties to this
1112		agreement are advised to talk to a title company about any other coverages available that will give the BUYER additional coverage.
113	1	(A). PRELIMINARY TITLE COMMITMENT: Prior to closing the transaction, SELLER or BUYER shall furnish to BUYER a preliminary commitment of a
114 715		fille insurance policy showing the condition of the tille to said premises. BUYER shall have
115		not fewer than twenty-four (24) hours prior to closing, within which to object in writing to the condition of the title as set forth in the preliminary commitment. If BUYER does not so object, BUYER shall be deemed to have accepted the conditions of the little. It is agreed that if the title of said premises is not marketable,
117		or cannot be made so withinbusiness day(s) after notice containing a written statement of defect is delivered to SELLER, BUYER'S Earnest Money
178 118		deposit will be returned to BUYER and SELLER shall pay for the cost of title insurance cancellation fee, escrow and legal fees, if any.
120		(B). TITLE COMPANY: The parties agree that // BYT her Title Company located at FACTOR Shall provide the title policy and preliminary report of commitment.
121		located at
122 123		(C). STANDARD GOVERAGE OWNER'S POLICY: SELLER shall within a reasonable time after dosing furnish to BUYER at title insurance policy in the
124		amount of the purchase price of the premises showing marketable and insurable title subject to the liens, enzumbrances and defects elsewhere set out in this
125		Agreement to be discharged or assumed by BUYER unless otherwise provided harein. The risk assumed by the title company in the staintand coverage
127		policy is limited to matters of public record, BUYER shell receive a ILTA/ALTA Owner's Policy of Title Insurance. A title company, at BUYER's request, can
128		provide information about the availability, desirability, coverage and cost of various title insurance coverages and endorsements. If BUYER desires title coverage other than that required by this paragraph, BUYER shall instruct Closing Agency in writing and pay any increase in cost unless otherwise provided
128		parely.
130 131		(D). EXTENDED COVERAGE LENDER'S POLICY (Mortgages policy): The lender may require that BUYER (Borrower) furnish an Extended Coverage
132	i	Landar's Policy. This extended coverage lander's policy considers matters of public record and additionally insures against certain matters not shown in the
133	1	public record. This extended coverage lender's policy is solely for the benefit of the lender and only protects the lender.
135		B. MECHANIC'S LIENS - GENERAL CONTRACTOR DISCLOSURE STATEMENT NOTICE: BUYER and SELLER are hereby notified fhat,
136		subject to Idaho Code §45-525 et seg., a "Genaral Contractor" must provide a Disclosure Statement to a homeowner that describes certain rights afforded
137	1	to the homeowner (e.g. lien waivers, general liability insurance, extended policies of little insurance, surary bonds, and sub-contractor information). The
139		Disclosure Statement must be given to a homeowner prior to the General Contractor entering into any contract in an amount exceeding \$2,000 with a homeowner for construction, alteration, repair, or other improvements to real property, or with a residential real property purchaser for the purchase and
140		sale of newly constructed property. Buch disclosure is the responsibility of the General Contractor and it is not the duty of your agent to obtain this
141	1	information on your bahalf. You are advised to consult with any General Contractor subject to Idaho Code \$45-525 of seq. regarding the General
142	(Contractor Disclosure Statement.
148	Ē	BUYER'S Initials () Date 7/02/57 SELLER'S Initials (R.S.) A.S.) Date 7-5-07
745		This from be referred and distributed by the bank. Association of the degree of the second
145 147		This form is priviled and diskibuted by the Idaho Association of REALTORSS, Joc. This form has been designed for and is provided only for use by real estate professionals who are members of the National Association of REALTORSSS, USE BY ANY OTHER PERSON IS PROPIED.
140		Gupyright Idaho Association of REALTORISTA, Inc. All rights reserved.
150	р	XE-21 REGIDENTIAL PURCHASE AND SALE AGREEMENT PAGE 2 OF B.JULY. 2008 EDITION
151	,	PARTY I DIRECTOR AND OWNER WAITEDWELK LANDER OF ANY THIND SMITH THE

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1000	RE-21 RESIDENTIAL PURCHASE AND BALE AGREEMENT PAGE 3 OF SUILY, 2006 EDITION
1: 11	HEST RESIDENTIAL PURCHASE AND BALE AGREEMENT PAGE 5 OF 6 JULY 2008 EDITION PROPERTY ADDRESS: STyplus Kandle
10	
11	[7]
- 18	The state of the s
16	finese rights and to make BUYER'S own selection of professionals with engropriate qualifications to conduct inspections of the entire property.
18	
16 16	
18	
18	As a man amon the state title batter the property of the property of the property and the state and
16	transaction and (c) assumed all liability, responsibility and expense for repairs or corrections other than for items which SELLER has otherwise agreed in
18	
17	als in any mit open usual and opinit mite heating along an openition and another an enterthy and sent activity because of
17	position of straining of straining topology to straining the
175	Items asked for in the BUYERS letter, then both parties agree that they will continue with the transaction and proceed to closing. This will remove the
174	
178	-y are demonstrated and the maniphotograph
177	
171	
180	the state and state and states of posterior states the distribution becaused by any and the angular and the states and the sta
182	repair or correct. SELLER shall make the property available for all inspections. BUYER shall keep the property free and clear of liens; indemnify and
188	
185	
188	10. LEAD PAINT DISCLOSURE: The subject property 🐧 is 🔲 is not defined as "Target Housing" regarding lead-based paint or lead-based paint
188	hezards. If yes, BUYER hereby acknowledges the following: (à) BUYER has been provided an EPA approved lead-based paint hazard information
190	pamphlet, "Protect Your Family From Lead in Your Home", (b) receipt of SELLER'S Disclosure of Information and Acknowledgment Form and have been provided with all records, test reports or other information, if any, related to the presence of lead-based paint hazards on said property, (c) that
197 192	this contract is contingent upon BUYERS right to have the property tested for lead-based paint hazards to be completed no later than
198	or the contingency will terminate, (d) that BUYER hereby [X] waives [] does not waive this right, (e) that if test results show unacceptable amounts of lead-based point on the premises, BUYER has the right to cancel the contract subject to the option of the SELLER (to be given
194 185	in writing) to elect to remove the lead-based paint and correct the problem which must be accomplished before closing, (f) that if the contract is
198	canceled under this clause, BUYER'S earnest money deposit will be returned to BUYER.
197 198	11. SQUARE FOOTAGE VERIFICATION; BUYER IS AWARE THAT ANY REFERENCE TO THE SQUARE FOOTAGE OF THE REAL PROPERTY OR IMPROVEMENTS IS APPROXIMATE. IF SQUARE FOOTAGE IS MATERIAL TO THE BUYER, IT MUST BE VERIFIED DURING THE INSPECTION PERIOD.
199	
200 201	12. SELLER'S PROPERTY DISCLOSURE FORM: If required by Title 55, Chapter 25 Idaho Code SELLER shall within ten (10) days after execution of this Agreement provide to BUYER "SELLER'S Property Disclosure Form" or other acceptable form. BUYER has received the "SELLER'S Property
202	Disclosure Form or other acceptable form prior to signing this Agreement: Yes No N/A
203 204	13. COVENANTS, CONDITIONS AND RESTRICTIONS (CC& R'S): BUYER is responsible to obtain and review a copy of the CC& R's (if
205	applicable). BUYER has reviewed CC& Rts. Yes V No
206 207	14. SUBDIVISION HOMEOWNER'S ASSOCIATION: BUYER is aware that membership in a Home Owner's Association may be required and
208	BUYER agrees to abide by the Articles of Incorporation, By-Lews and rules and regulations of the Association, BUYER is further aware that the
208 210	Property may be subject to assessments levied by the Association described in full in the Declaration of Covenants, Conditions and Restrictions, BUYER has reviewed Homeowner's Association Documents: Yes No NA Association fees/dues are \$
211	per BUYER SELLER N/A to pay Homeowner's Association SET UP FEE of \$ and/or property
212	TRANSFER FEES of \$ at dosing.
213 214	15. "NOT APPLICABLE DEFINED:" The letters "n/a," "N/A," "n.a.," and "N.A." as used herein are abbreviations of the term "not applicable." Where
215	this agreement uses the term "not applicable" or an abbreviation thereof, it shall be evidence that the parties have contemplated certain facts or
215 217	conditions and have determined that such facts or conditions do not apply to the agreement or transaction herein.
218	BUYER'S Initials (R.) Date 7/02/17 SELLER'S Initials (R.) B. Date 7-5-07
19 20	This form is privide and distributed by the train Association of RALTORSO. (at: This form have been declared for and is provided only for time by real exists a confessionals who are members of the
221	National Association of REALTORS & USE BY ANY OTHER PERSON IS PROHIBITED, Copyright Idaho Association of REALTORS O, Ioc. All rights reserved. RE-21 RESIDENTIAL PURCHASE AND BALE AGREEMENT PAGE 3 of 6 JULY. 2005 EDITION

Reply NT 2nd moth

REST REBIDENTIAL PURCHAS	E AND SALE AGREEMENT PAGE 4 of 6 JULY, 2008 EDITION
PROPERTY ADDRESS:	Stephens
	4

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The plant in Part and									
	BUYER	SELLER	Shared : Equally	-NIA		BUVER	BELLER .	Shered Equally	N/A
Appraisal Fee	X			·	Title Ins. Standard Coverage Owner's Policy		Х		
Apprehed Re-Inspection Fee				χ	Tille Ins. Extended Coverage Lender's Policy — Morigages Policy		1		χ
Closing Espray Fee			X		Additional Title Coverage				У
Lander Document Preparation Fee				X	Fuel in Tank – Amount to be Determined by Supplier				ķ
Tex Service Fee				K	Wall Inspection				*
Flood Certification/Tracking Fee				X	Sepilo inspecilons				¥
Lender Required inspections				X	Septic Pumping			,	<i>x</i>
Attorney Contract Preparation or Raview Fee				ķ	Survey				1_
•									

**	OCCUPANCY:		-					
71.	LICE STREET A BUTY	DI IVED IM Anne	d I dan	n mat laboard to	mant mul mean	nachi en O	(NUCLEUS and Inc.	ans maidanas
.,,	manch Mish !!	DU FEN IX (UUGA	1 1 1 1 1 1 1 1 1	a noi manu u	OCCUDA DIOL	REIEN RP D	UTEROUIIII	alv labination,

18. FINAL WALK THROUGH: The SELLER grants BUYER and any representative of BUYER reasonable access to conduct a final walk
mrough inspection of the premises approximatelycalandar day(s) prior to close of escrow, NOT AS A CONTINGENCY OF THE SALE, but
for purposes of satisfying BUYER that any repairs agreed to in writing by BUYER and SELLER have been completed and premises are in
substantially the same condition as on acceptance date of this contract. SELLER shall make premises available for the final walk through and
agrees to accept the responsibility and expense for making sure all the utilities are turned on for the walk through except for phone and cable. If
SUYER does not conduct a final walk through BUYER specifically releases the SELLER and Broker(s) of any liability.

19. RISK OF LOSS: Prior to closing of this sale, all risk of loss shall remain with SELLER. In addition, should the premises be materially damaged by fire or other destructive cause prior to closing, this agreement shall be void at the option of the BUYER.

20. CLOSING: On or before the closing date, BUYER and SELLER shall deposit with the closing agency all funds and instruments necessary to
complete this transaction. Closing means the date on which all documents are either recorded or accepted by an escrow agent and the sale
proceeds are available to SELLER. The closing shall be no later than (Date)
The parties agree that the CLOSING AGENCY for this transaction shall be 1007 here. Title
located at
If a long-term esorow / collection is involved, then the long-term esorow holder shall be
21. POSSESSION: BUYER shall be entitled to possession of upon closing ordate
22. SALES PRICE INFORMATION: SELLER and BUYER hereby grant permission to the brokers and either party to this Agreement, to disclose
sale data from this transaction, including selting price and properly address to the local Association / Board of REALTORSO, multiple listing service, its members, its members prospects, appraisers and other professional users of real estate sales data. The parties to this Agreement acknowledge that

23. FACSIMILE TRANSMISSION: Faceimile or electronic transmission of any signed original document, and retransmission of any signed facsimile or electronic transmission shall be the same as delivery of an original. At the request of either party or the Closing Agency, the parties will confirm facsimile and electronic transmitted synatties by signing an original document.

sales price information compiled as a result of this Agreement may be provided to the County Assessor Office by either party or by either party's Broker.

facsimile and electronic transmitted signatures by signing an original document.	
BUYER'S Initials (()) Date 7/02/07	SELLER'S Initials (C.S.) (Bl.) Date 7-5-07

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RE-21 RESIDENTIAL PURCHASE AND SALE AGREEMENT PAGE 4 of 6 JULY, 2006 EDITION

Reply NT 2nd moth

	278 274 275	RE21 RESIDENTIAL PURCHASE AND SALE ACREEMENT PAGE 5 of MULY, 2018 EDITION	271
À	278	24. SINGULAR AND PLURAL terms each include the other, when appropriate.	تقبيب تشتشمه ي
7	277 278 279 280 281 282	25. BUSINESS DAYS & HOURS A business day is herein defined as Monday through Friday, 8:00 A.M. to 5:00 P.M. in the local firm where the subject real property is physically located. A business day shall not include any Saturday or Sunday, nor shall a business day any legal holiday recognized by the state of Idaho as found in Idaho Code § 73-708. The time in which any act required under this agreeme be performed shall be computed by excluding the date of execution and including the last day. The first day shall be the day after the execution. If the last day is a legal holiday, then the time for performance shall be the next subsequent business day.	include nt is to
	284 285 286	26. SEVERABILITY: In the case that any one or more of the provisions contained in this Agreement, or any application thereof, shall be illegal or unenforceable in any respect, the validity, legality or enforceability of the remaining provisions shall not in any way be affected or in	nvalid, paired
	287 285 289 290 281	27. ATTORNEY'S FEES: If either party initiates or defends any arbitration or legal action or proceedings which are in any way connected w. Agreement, the prevailing party shall be entitled to recover from the non-prevailing party reasonable costs and attorney's fees, including such cost sees on appeal.	ith this sts and
	282 283 284 285 295 297 298 299	28. DEFAULT: If BUYER defaults in the performance of this Agresment, SELLER has the option of: (1) accepting the Earnest Money as liquid damages or (2) pursuing any other lewful right and/or remedy to which SELLER may be entitled. If SELLER elects to proceed under (1), SELLE make demand upon the holder of the Earnest Money, upon which demand said holder shell pay from the Earnest Money the costs incur SELLER'S Broker on better of SELLER and BUYER related to the transaction, including, without limitation, the costs of title insurance, asprose appraisal, credit report fees, inspection fees and altorney's fees; and said holder shall pay any balance of the Earnest Money, one-half to SELLER'S Broker, provided that the amount to be paid to SELLER'S Broker shall not exceed the Broker's agreed to commission. Stand BUYER specifically acknowledge and agree that if SELLER elects to accept the Earnest Money as liquidated damages, such shall be SEL sole and exclusive remedy, and such shall not be considered a penalty or forfeiture. If SELLER elects to proceed under (2), the holder of the Earnest Money as liquidated and accept the Earnest Money as liquidated damages, such shall be SEL sole and exclusive remedy, and such shall not be considered a penalty or forfeiture. If SELLER elects to proceed under (2), the holder of the Earnest Money as liquidated and exclusive remedy.	R shall red by w fees, ER end ELER'S LER'S iemest
;	500 801 802 903 304 306	Money shall be entitled to pay the coals incurred by SELLER'S Broker on behalf of SELLER and BUYER related to the transaction, including, vimilation, the costs of brokerage fee, tille insurance, escrow fees, appraisal, credit report fees, inspection fees and attorney's fees, with any belative Earnest Money to be held pending resolution of the matter. If SELLER defaults, having approved said sale and falls to consummate the same as herein agreed, BUYER'S Earnest Money deposible returned to him/her and SELLER shall pay for the costs of tille insurance, escrow fees, appraisals, credit report fees, inspection fees, brokerag and attorney's fees, if any. This shall not be considered as a waiver by BUYER of any other lawful right or remedy to which BUYER may be expected.	ince of It shall ie fees
	307 308 309 310	29. EARNEST MONEY DISPUTE / INTERPLEADER: Notwithstanding any termination of this contract, BUYER and SELLER agree that in the of any controversy regarding the Earnest Money and things of value held by Broker or closing agency, unless mutual written instructions are recein the holder of the Earnest Money and things of value, Broker or closing agency shall not be required to take any action but may await any proceed at Broker's or closing agency's option and sole discretion, may interpleed all parties and deposit any montes or things of value into a count of comparison and shall recover court costs and reasonable attorney's fees.	ved by Img, or
3	113 114 115	30. COUNTERPARTS: This Agreement may be executed in counterparts. Executing an agreement in counterparts shall mean the signature two identical copies of the same agreement. Each identical copy of an agreement algreed in counterparts is dearned to be an original, a identical copies shall together constitute one and the same instrument.	e of und all
3	16 17 116 118 20	31. REPRESENTATION CONFIRMATION: Check one (1) box in Section 1 and one (1) box in section 2 below to confirm that in this transaction brokenage(s) involved had the following relationship(s) with the BUYER(5) and SELLER(5).	m, the
	21	Section 1:	
	22	A. The brokerege working with the BUYER(S) is acting as an AGENT for the BUYER(S).	· make
3	23 24	□ B. The brokerage working with the BUYER(S) is acting as a LIMITED DUAL AGENT for the BUYER(S), without an ASSIGNED ACC. The brokerage working with the BUYER(S) is acting as a LIMITED DUAL AGENT for the BUYER(S) and has an ASSIGNED A	
	25 26	acting solely on behalf of the BUYER(S).	
3	27 -	Section 2:	
8		· XA The brokerage working with the SELLER(S) is acting as an AGENT for the SELLER(S).	
	29	B. The brokerage working with the SELLER(S) is acting as a LIMITED DUAL AGENT for the SELLER(S), without an ASSIGNED AC	
33		IC. The brokerage working with the SELLER(S) is acting as a LIMITED DUAL AGENT for the SELLER(S) and has an ASSIGNED A acting solely on behalf of the SELLER(S).	SENT
33		D. The brokerage working with the SELLER(S) is acting as a NONAGENT for the SELLER(S).	
33 33 33	14 15 16	Each party signing this document confirms that he has received, read and understood the Agency Disclosure Brochure adopted or approved by the Idaho real estate commission has consented to the relationship confirmed above. In addition, each party confirms that the brokerage's agency office policy was made available for inspection and review. PARTY UNDERSTANDS THAT HE IS A "CUSTOMER" AND IS NOT REPRESENTED BY A BROKERAGE UNLESS THERE IS A SIGNED WRITTEN AGREEMENT FOR AGREEME	EACH
33		BUYER'S Initials () Date 7/02/07 SELLER'S Initials () Date 7-5-6	7
33		BUYER'S Initials (()) Date 0 2 1 SELLER'S Initials (() () () Date 7-y - 0 Titls form to principle and distributed by the Idaho Association of REALTORSS. Inc. This form has been designed for and is provided only for use by real estate professionals who are intember	s of the
34	If	This form is printed and distributed by the Idaho Association of REALTORSO, Inc. This form has been designed for and is provided only for use by real estate professionals who are members National Association of REALTORSO, Inc. All rights reserved.	,

Reply NT 2nd moth

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343	RE-21 RESIDENTIAL PURCHASE AND SALE AGREEMENT PAGE 8 of 8 JULY, 2005 EDITE	nai					
344 345	DEPOSITE OF THE PARTY OF THE PA	ya.			mæ Ž	307021	77 P
346 347 348 349 350	32. ENTIRE AGREEMENT: This Agreement contains the entire Aprior Agreements between the parties respecting such matters. No wrepresentations not expressly set forth herein shall be binding upon eith	greement of the parties	onicenees	the matters	herein set forth	and superse	edes all
351 352	33. TIME IS OF THE ESSENCE IN THIS AGREEMENT.						•
388 354 385	34. AUTHORITY OF SIGNATORY: If BUYER or SELLER is a agreement on its behalf warrants his or her authority to do so and to bit	corporation, partnershind BUYER or BELLER	ip, trust, es	tate, or oth	er entity, the pe	rson executi	ing this
386 357 358 359	35. ACCEPTANCE: BUYER'S offer is made subject to the acceptance in which property is located)	e of SELLER on or bef R does not accept thi	iore (Date) s Agreemer	/2/11/. ht aidifw in	time specified	at (Loc the entire E	al Time Samest
380 381	36. BUYER'S SIGNATURES:			1y			
362 363	SEE ATTACHED BUYER'S ADDENDUM(S): (Specify no	mber of BUYER adden	ndum(s) atta	ched.)			
364 365	BUYER Signature Dy Charles of	BUYER (Print N	lame)				
386 367	BUYER Signature by San Raule & Date 7/02/07 Time /1:28 DA.M. D.M.	Phone #					
308 368	Address	City	State_		_Zip		
370 371	E-Mail Address	Fex#					
72 73	tani ding dan lain tang bish wan wan dada baga tapi badi dani dada bana gipa kawa unun sun bagi dang dani pada dani tani _{dada} t						
74 75	BUYER Signature	BUYER (Print N					
77	DataTime	Phone #					
	Address	Olty			_Zip		
80 91	E-Mail Address	Fax#					
33	37. SELLER'S SIGNATURES: On this data, IWa hereby approve and accept the transaction set for the part of the SELLER.	orth in the above Agr	eement and	d agree to	cany out all the	e terms then	eof an
37	SIGNATURE(S) SUBJECT TO ATTACHED COUNTER OFFER	к.					
19	SIGNATURE(S) SUBJECT TO ATTACHED ADDENDUM(S) #	ANTONIO INTERNATIONALIA					
#1 \ .	SELLER Signature	SELLER (Print N	lame)				
3 1	Date Time	Phone #					
14 15 /	Address 436 W CoppleSone Or.	City phonide	State_	West	Zip 8 43.	72	
-	-Mali Address	Fax#					٠
9 ~	. Note have been have good which had not not now more may may been been been soon and note have been now and beauty of	man house year bands according years bridge groups to					
10/5	SELLER Signature	SELLER (Print N	lame)				
2 3 C	DateTime	Phone #	The state of the s	_Cell#			
	Address	Cfly	State		_Zip		
s 7 E 3	-Mall Address	Fax#					
, (CONTRACTOR REGISTRATION # (if applicable)						
! 7	This form is printed and distributed by the Idaho Association of REALTORSOs, Inc. This form has t National Association of REALTORSOS. USE:	rest designed for and is provid BY ANY OTHER PERSON IS	ded only for USE PROHIBITED.	by residents	professionals who are	members of the	

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RS-12 COUNTER OFFER, MILY, 2005 EMITON Page 1 of 1

N
REALTOR®

RE- 13 COUNTER OFFER

(1, 2, 3, etc.



THIS COUNTER OFFER SUPERCEDES ALL PRIOR COUNTER OFFERS

THIS IS A LEGALLY BINDING CONTRACT, READ THE ENTIRE DOCUMENT INCLUDING ANY ATTACHMENTS. IF YOU HAVE ANY QUESTIONS, CONSULTYOUR ATTORNEY AND/OR ACCOUNTANT BEFORE SIGNING.

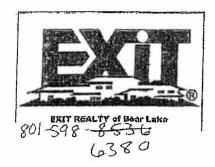
	COMPACT TO MELET INVESTIGATION PROPERTY DESCRIPTIONS
1	This is a COUNTER OFFER to the Purchase and Sale Agreement Dated: 7-2-01
2	ADDRESS: STrphyns Rauch 10#
3	BUYER:
4	SELLER STEPHENS . Family Trust
8	The parties accept all of the terms and conditions in the above-designated Purchase and Sale Agreement with the following changes:
8	D'This is a SELLER counter offer. The SELLER reserves the right to withdraw this offer or accept any other offers prior to the receipt of a
7	true copy of algred acceptance of this Counter Offer within the time frame specified herein.
8	This is a BUYER counter offer. The undersigned BUYER reserves the right to withdraw this offer at any time prior to the receipt of a true copy of eigned acceptance of this Counter Offer within the time frame specified hereIn.
10	Dr. Ann
. 11	PURCHASE PRICE \$ 800,000 EIGHT HUNDRED THOUSAND DOLLARS
12	DOWN PRYMENT 1/3 OF \$800,000 (# 266,667)
18	CARRY BALANCE OF \$ 583,553 00 10 YEAR CONTRACT AT 8 1/2 % INTREST
14	EARNEST MODEY DOWN & 3,000
15	
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24	2 */
25	28,000 - 3d,640.
26	
27 28	To the extent the terms of this Counter Offer modify or conflict with any provisions of the Purchase and Sale Agreement including all prior Addendums, the terms in this Counter Offer shall control. All other terms of the Purchase and Sale Agreement including all prior Addendums
29	not modified by this Counter Offer shall remain the same. Buver and Seller acknowledge the down navment and/or loan amount on
30 31	Page 1 of Purchase & Sale Agreement may change if purchase price is changed as part of this Counter Offer. Upon its execution by both parties, this agreement is made an integral part of the agreement of the parties.
32	
33	If a signed acceptance is not delivered on or before (date:) 7 · 18 · 07 at 5 · 00 DA.M. DP.M. this Counter
34 35	Offer shall be deemed to have expired.
38	DELIVERY: Delivery shall be to the agentibroker working with the maker of the Counter Offer in person, by mail, facsimile or electronic
37 38	transmission of any signed original document, and retransmission of any signed original document. Retransmission of any signed faceimile or electronic transmission shall be deemed to be the same as delivery of an original.
39	Y
40	SELLER adden of Attached FOR Roger Stephen's Date 7, 9-07 Time 5:00 DAM DEM
41	SELLER Date DAM CP.M.
	BUYER Marks flack. Date 7/11/57 TEMPLY TOAM ON
42	BUYER OVER TOTAL TOTAL OF THE T
43	BUYER Date Time DAM DPM
	This form is printed and distributed by the Idaho Association of REALTORSO, Inc. Tigs form has been designed and is provided only for use by real estate professionals who
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	RE-18 COUNTER OFFER, MILY, 2016 EDITION Page 1 of 1

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07-26-07; 02:58PM;





Evan Skinner #1 CHOICE

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2088473203

196 South 4th Street
Montpelier, Idaho 83254
Office: (208)-847-EVAN
Cell: (208) 317-6310
Office: (208) 847-3200
Fax: (208) 847-3203
got if
loow souting back Fax
call it on cell when a

Email: skiev1@gmail.com

Http://www.evanskinner.com

Facsimile Transmittal Sheet
FROM: Evan Skinner
TO: Steven. DATE: 7-25-07
FAX NUMBER 801-756-3150
NUMBER OF PAGES (INCLUDING COVER)
COMMENTS Please initial + Date
of Fax Back A.S.A.P or email Back of
Let me Know when you send it Back
SO I WILL KNOW
Cell # 208-317-6310
Title co. said we can close By next Wed.
Do you want to come up or should
We send the papers to you?

Reply NT 2nd moth

1406

1/ 18



RE-21 REAL ESTATE PURCHASE AND SALE AGREEMENT



THIS IS A LEGALLY BINDING CONTRACT. READ THE ENTIRE DOCUMENT INCLUDING ANY ATTACHMENTS. IF YOU HAVE ANY QUESTIONS, CONSULT YOUR ATTORNEY AND/OR ACCOUNTANT BEFORE SIGNING.

10# ES072607		DATE	July 25,07
LISTING AGENCY	ot Lasted.	Office Phone #	1
Listing Agent			Phone #Phone #
SELLING AGENCY	Exit Realty of Bear Lake	Office Phone # 208-84	17-3280 Fax# 208-847-3203
Selling Agent _ FUAM	SKI nnerte Mall	4 das 4	Phone # 347-30/0
1. BUYER: STEUCE "BUYER") agrees to purchase COMMONLY KNOWN AS	se, and the undersigned SELLER agrees to so County, ID, Zip 83254 legally de	City.	Phone # 347-310 [Hereinafter called state hereinafter referred to as "PREMISES" WONTER 114V-
2. \$ 850,000 payable upon the following	PURCHASE PRICE: Eight g TERMS AND CONDITIONS (not including o	dosing costs) :	Fly Thousand DOLLARS,
	Note: A+C+D+E must add up to total pu		
Earnest Money evidenced ☐ other In trust account ☐ upon r	by:cash K) personal checkcashier's cachier's cachi	check [] note (due date); // () and a receipt is hereby and shall be held by: [] Usting E	Be Sout in mail 7-26-07 acknowledged, Earnest Money to be deposited broker A Selling Broker A your Olson
"0" (ZERO.) IF CASH OF BUYER agrees to provide sufficient funds and/or pro- financial statement or con-	LL CASH OFFER: NO X YES If this is a FFER, BUYER'S OBLIGATION TO CLOSE SHED SELLER within business days ceeds necessary to close transaction. Acceptatract(s) for the sale of BUYER'S current residen	n all cash offer do not comple IALL NOT BE SUBJECT TO AN s from the date of acceptance of this documentation includes, but	to lines 32 through 61, fill blanks with IY F(NANCIAL CONTINGENCY. This agreement by all parties, evidence of
☐ FIRST LOAN of \$	NT, OTHER with Intere	mortgage insurance, through [] est not to exceed% in Us) plus origination fee if any. St	FHA, \(\subseteq VA, \(\subseteq \text{CONVENTIONAL}, \(\subseteq \text{IHFA}\), or a period of \(\subseteq \text{Year(s) at:} \subseteq \text{Fixed Rate} \) ELLER shall pay no more than \(\subseteq \text{point(s)}\).
SECOND LOAN of \$BU	with interest n	of to exceed% for us origination fee if any. SELLE	a period of year(s) at:
LOAN APPLICATION: business days of final accredit report, income veri underwriting. If such wir agreement by notifying BU not cancel writin the skict to and shall be deemed to has by lender, the property in may also apply for a loan fulfilled, and the new loan FHA / Va: If applicable, purchase of the property of accordance with HUD/FH Endorsement lender setting required by FHA or VA. Additional financial term Line E Line E 4/7, DO N(E). A	BUYER I has applied shall apply for such ceptance of all parties, BUYER agrees to fur fication, debt ratios in a mammer acceptable to file confirmation is not received by SELLER, YER(S) in writing of such cancellation within me period specified as set forth herein, SELLER, re elected to proceed with the transaction. SELL ust appraise at not less than purchase pric with different conditions and costs and close foes not increase the costs or requirements to its expressive agreed that notwithstanding any excited herein or to hear any penalty or forfeit A or VA requirements a written statement by forth the appraised value of the property of not DDITIONAL FINANCIAL TERMS: Be are contained in a FINANCING ADDENDUITED TO THE TE SE are contained in a FINANCING ADDENDUITED TO THE SE ADDENDUITED TO THE SECONDE TO THE SE ADDENDUITED TO THE SE ADDENDUITED TO THE SECONDE TO THE	loan(s) within	ay(s) of SELLER'S acceptance. Within
to be paid by BUYER at cl of above loans being Assu shall be adjusted at closing	osing in GOOD FUNDS, includes: cash, election of taken "subject to", any net differences of escrow in: Cash Other:	tronic transfer funds, certified between the approximate balar	check or cashler's check. <u>NOTE</u> : If any noses and the actual balance of sald loan(s)
UYER'S initials ()() Date 07-21-07		ls ()() Date
1934 opper of printed and distribute National Association E-21 RESIDENTIAL PURCHASE AND S	of by the iden Association of REALTORSO, Inc. This form ha of REALTORSO, USE BY ANY OTHER PERSON IS PROHII ALE AGREEMENT PAGE 1 of 8 JULY, 2005 EINTKIN	s been designed for and is provided only to STYED, Copyright ideho Association of REA	ruse by real estate professionals who are members of the LTORS®, Inc. All rights reserved.

Reply NT 2nd moth

	PAGE LOF 8 PAGES RE-21 PURCHASE & BALEB AGREEMENT
and the same	PROPERTY ADDRESS: ST-D News Panch, 10# PS072607
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86	(A) ADDITIONAL ITEMS SPECIFICALLY INCLUDED IN THIS SALE: YOU & have S of Senning low
87	Turigation - and 100 shower of margarithm thrightien - offist the
88	1385 International Trattor - Avancy's And all Furriture The
89 90	Beller Leaves and all springler Editopment & Hand Ding
91	(B). ITEMS SPECIFICALLY EXCLUDED IN THIS SALE: REN FOYS POYSO MAR PS 44 D must
92	
93	and I tems in the home That The Seller wishes TO King.
94	V
95	7 THE CONTRACTOR TO CONTRACT AND ADDRESS OF THE PROPERTY OF TH
96 97	TiTLE CONVEYANCE: Title of SELLER is to be conveyed by warranty deed, unless atherwise provided, and is to be marketable and insurable except for rights reserved in federal patents, state or railroad deeds, building or use restrictions, building and zoning regulations and ordinances of any governmental
98	Unit, and rights of way and easements established or of record. Llens, encumbrances or defects to be discharged by SELLER may be paid out of purchase
99	money at date of closing. No liens, encumbrances or defects which are to be discharged or assumed by BUYER or to which title is taken subject to, exist
100	unless otherwise specified in this Agreement,
101	
102	8. TITLE INSURANCE: There may be types of title insurance coverages available other than those listed below and parties to this agreement are
103	advised to talk to a title company about any other coverages available.
1D4	(A) TITLE COMMITMENT District Spirit Boundary Marie District And Distr
105 106	(A). TITLE COMMITMENT: Prior to closing the transaction, [X] SELLER or [] BUYER shall furnish to BUYER a commitment of a title insurance policy showing the condition of the title to said premises. BUYER shall havebusiness day(s) from receipt of the commitment or not fewer than twenty-four (24)
107	hours prior to closing, within which to object in writing to the condition of the fittle as set forth in the commitment. If BUYER does not so object, BUYER shall be
108	deemed to have accepted the conditions of the title. It is agreed that if the title of said premises is not marketable, or cannot be made so withinbusiness
108	day(s) after notice containing a written statement of defect is delivered to SELLER, BUYER'S Earnest Money deposit will be returned to BUYER and SELLER
110	shali pay for the cost of title insurance cancellation fee, escrow and legel fees, if any.
111	A the Tale
12	(B). TITLE COMPANY: The parties agree that No There Title Company located at N. L. Montpelies
13	shall provide the title policy and preliminary report of commitment.
14 15	(C), STANDARD COVERAGE OWNER'S POLICY: SELLER shall within a reasonable time after closing furnish to BUYER a title insurance policy in the
16	amount of the purchase price of the premises showing marketable and insurable title subject to the flens, encumbrances and defects elsewhere set out in this
17	Agreement to be discharged or assumed by BUYER unless otherwise provided herein. The risk assumed by the title company in the standard coverage
18	policy is limited to matters of public record. BUYER shall receive a ILTA/ALTA Homeowner's Policy of Title Insurance. A title company, at BUYER's
19	request, can provide information about the availability, destrability, coverage and cost of various title insurance coverages and endorsements. If BUYER
20	desires title coverage other than that required by this paragraph, BUYER shall instruct Escrow Holder In writing and pay any Increase in cost unless otherwise
21	provided herein.
22	
23	(D). EXTENDED COVERAGE LENDER'S POLICY (Mortgagee policy): The lender may require that BUYER (Borrower) furnish an Extended Coverage
24	Lender's Policy. This extended coverage lender's policy considers matters of public record and additionally insures against certain matters not shown in the
25	public record. This extended coverage lander's policy is solely for the benefit of the lander and only protects the lander.
26	0 MECHANICIS LIENE CENEDAL CONTRACTOR DISCUSSION OF THE STATE STATE OF SELECTION OF
27 28	9. MECHANIC'S LIENS - GENERAL CONTRACTOR DISCLOSURE STATEMENT NOTICE: BUYER and SELLER are hereby notified that,
حة. 29	subject to Idaho Code §45-526 et seq., a "General Contractor" must provide a Disclosure Statement to a homeowner that describes certain rights afforded to the homeowner (e.g. lien waivers, general Ilability insurance, extended policies of title insurance, surety bonds, and sub-contractor
30	information). The Disclosure Statement must be given to a homeowner prior to the General Contractor entering into any contract in an amount exceeding
31 31	\$2,000 with a homeowner for construction, elteration, repair, or other improvements to real property, or with a residential real property purchaser for the
2	purchase and sale of newly constructed property. Such disclosure is the responsibility of the General Contractor and it is not the duty of your agent to
3	obtain this information on your behalf. You are advised to consult with any General Contractor subject to Idaho Code \$45-525 et seq. reparding the
4	General Contractor Disclosure Statement.
	BUYER and SHILER and sold of the commission of copy of this page, which contribute PAGES BUYER'S britished N Date 5.72 - 7.0 - 3.50711 Wales to care.
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19	RE-21 RESIDENTIAL PURCHASE AND SALE AGREENENT PAGES of 8 JULY 2005 EDMION
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175	CONTRACTOR AND
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177	3). If the SELLER elects not to correct the disapproved items, or does not respond in writing within the strict time period specified, then the
178	BUYER(S) have the option of either continuing the transaction without the SELLER being responsible for correcting these deficiencies or giving the SELLER written notice within business days that they will not confinue with the transaction and will receive their Earnest Money back.
179 188	Description with the second state of the second sec
181	4). If BUYER does not give such written notice of cancellation within the strict time periods specified, BUYER shall conclusively be deemed
182	to have elected to proceed with the transaction without repairs or corrections other than for items which SELLER has diherwise agreed in writing to
163	repair or correct. SELLER shall make the property available for all inspections. BUYER shall keep the property free and clear of flens; indemnity and
184 185	hold SELLER harmless from all liability, claims, demands, damages and costs; and repair any damages arising from the inspections. No inspections may be made by any governmental building or zoning inspector or government employee without the prior consent of SELLER unless required by local
188	iaw.
187	de
188	10. LEAD PAINT DISCLOSURE: The subject property 🖾 is 🗌 is not defined as "Target Housing" regarding lead-based paint or lead-based paint
189 190	hazards. If yes, BUYER hereby acknowledges the following: (a) BUYER has been provided an EPA approved lead-based paint hazard information pamphiet, "Protect Your Family From Lead in Your Home", (b) receipt of Seller's Disclosure of Information and Acknowledgment Form and have been
191	provided with all records, leaf reports or other information, if any, related to the presence of lead-based paint hazards on said property, (c) that this
192	contract is conlingent upon BUYERS right to have the property tested for lead-based paint hazards to be completed no later than
193	or the contingency will terminate, (d) that BUYER hereby Walves K does not walve this right, (e) that if test results show
194 195	unacceptable amounts of lead-based paint on the premises, BUYER has the right to cancel the contract subject to the option of the SELLER (to be given in writing) to elect to remove the lead-based paint and correct the problem which must be accomplished before closing, (f) that if the contract is
198	canceled under this clause, BLYTER'S samest money deposit will be returned to BUYER.
197	
195	11. SQUARE FOOTAGE VERIFICATION: BUYER IS AWARE THAT ANY REFERENCE TO THE SQUARE FOOTAGE OF THE REAL PROPERTY OR
199 200	IMPROVEMENTS IS APPROXIMATE. IF SCHARE FOOTAGE IS MATERIAL TO THE BLIVER, IT MUST BE VERIFIED DURING THE INSPECTION PERIOD.
201	12. SELLER'S PROPERTY DISCLOSURE FORM: If required by Title 55, Chapter 25 Idaho Code SELLER shall within fan (10) days after execution
202	of this Agreement provide to BUYER "SELLER'S Property Disclosure Form" or other acceptable form. BUYER has received the "SELLER'S Property
508	Olsclosura Form" or other acceptable form prior to signing this Agreement: Yes No NA
204	
205 206	13. COVENANTS, CONDITIONS AND RESTRICTIONS, (CC& R'S): BUYER is responsible to obtain and review a copy of the CC& R's (if applicable). BUYER has reviewed CC& R's. Yes No X NVA
207	The Man
208	14. SUBDIVISION HOMEOWNER'S ASSOCIATION: BUYER is aware that membership in a Home Owner's Association may be required and
209	butter agrees to ablde by the Articles of Incorporation, By-Laws and rules and regulations of the Association, Buyer is further aware that the
210	Property may be subject to assessments levied by the Association described in tidl in the Declaration of Covenants, Conditions and Restrictions,
211 212	BUYER has reviewed Homeowner's Association Documents: Yes W No NA Association fees/thes are \$ per BUYER SELLER NA NA to pay Homeowner's Association SET UP FEE of\$ and/or property
213	TRANSFER FEES of \$ and control
214	
215	15. "NOT APPLICABLE DEFINED:" The letters "n/a," "N/A," "n.a.," and "N.A." as used herein are abbreviations of the term "not applicable." Where
216	this agreement uses the term "not applicable" or an abbreviation thereof, it shall be evidence that the parties have contemplated certain facts or conditions and have determined that such facts or conditions do not apply to the agreement or transaction herein.
217	and have describing that and race of commons to not apply to me agreement of transaction neight.
218	BILLIAND IN THE STATE OF THE ST
219 220	The first in the first Lab 12d
221 222	BUYER'S, Initials () () Dates 7—26—27 SELLER'S Initials () () Date 18 form is greated and distributed by the 18 day Agriculture of NEALTORS in Inc. This form has been designed for end is provided only for use by real extent professionals who are members of the National Association of REALTORS USE BY ANY OTHER PRESON IS PROPIRETED. Copyright (ship Association of REALTORS 6, for All signs reserved REALTORS 6, for All signs reserved

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RE-21 REBIDENTIAL PURCHASE AND SALE AGREEMENT PAGE 4 of 8 JULY, 2005 EDITION

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27	* PROPERTY ADDRESS: STAP LINES FOR MAY 103 EDITION 1 - of MONTACION 1895: ES07260", 7 24. SINGULAR AND FLURAL terms each include the other, where appropriate.
27	7 24. SINGULAR AND PLURAL terms each include the other, when appropriate.
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	whether the diagram and property to physically magnificating being being being the about the physical tracking and another the color of
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285	execution. If the last day is a legal holiday, then the time for performance shall be the next subsequent business day.
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285	28. SEVERABILITY: In the case that any one or more of the provisions contained in this Agreement, or any application thereof, shall be invalid,
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280	the second of a second branch to second the second of
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291	ties on appeal.
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293	28. DEFAULT: If BUYER defaults in the performance of this Agreement, SELLER has the option of: (1) accepting the Earnest Money as liquidated
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225	and the control of th
	. And a configuration of the c
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296	SELLER'S Broker, provided that the amount to be paid to SELLER'S Broker shall not exceed the Broker's agreed to commission. SELLER and BUYER
300	specifically acknowledge and agree that if SELLER elects to accept the Earnest Money as Squidated damages, such shall be SELLER'S sole and
301	exclusive remedy, and such shall not be considered a penalty or forfeiture. If SELLER elects to proceed under (2), the holder of the Earnest Money shall
202	be entitled to pay the costs incurred by SELLER'S Broker on behalf of SELLER and BUYER related to the transaction, including, without limitation, the
303	costs of brokerage fee, title insurance, escrow fees, appraisal, credit report fees, inspection fees and attorney's fees, with any betance of the Earnest
304	Rioney to be held pending resolution of the matter.
205	if SELLER defaults, having approved said sale and fails to consummate the same as herein agreed, DLIVER'S Earnest Money deposit shall
208	be returned to him/her and SELLER shall pay for the costs of title insurance, escrew fees, appreisals, credit report fees, inspection fees, brokerage fees
307	and attorney's fees, if any. This shall not be considered as a waiver by BUYER of any other lawful right or remedy to which BUYER may be entitled.
308	
309	29. EARNEST MONEY DISPUTE / INTERPLEADER: Notwithstanding any termination of this contract, BUYER and SELLER agree that in the event
310	of any controversy regarding the Earnest Money and things of value held by Eloker or closing apancy, inters mutual written instructions are received by
211	the holder of the Earnest Maney and things of value, Broker or closing agency shall not be required to take any action but may await any proceeding, or
212	at Broker's or closing agency's option and sole discretion, may interpleged all parties and deposit any monies or things of value into a court of competent
313	juristiction and shall recover court costs and reasonable altomey's fees.
314	C.B. CLARY CO. MICH.
315	30. COUNTERPARTS. This Agreement may be executed in counterparts. Executing an agreement in counterparts shall mean the signature of
318	two identical copies of the same agreement. Each identical copy of an agreement signed in counterparts is deemed to be an original, and all
317	Identical copies shall together constitute one and the same instrument.
318	
319	31. REPRESENTATION CONFIRMATION: Check one (1) box in Section 1 and one (1) box in section 2 below to confirm that in this transaction, the ats
320	brokerage(s) involved had the following relationship(s) with the BUYER(S) and SELLER(S).
321	
322	Section 1:
323	A. The brokerage working with the EUVER(S) is acting as an AGENT for the BUVER(S).
to Lab	
324	B. The brokerage working with the BUVER(S) is setting as a LEWTED DUAL AGENT for the BUVER(S), without an ASSIGNED AGENT.
325	C. The brokerage working with the BUYER(S) is acting as a LESTED DUAL AGENT for the BUYER(S) and has an ASSIGNED AGENT
326	acting solely on behalf of the BUYER(S).
327	[X]D. The brokerage working with the BUVER(S) is acting as a MONAGENT for the BUVER(S).
328	Section 2:
329	The himbrarene washing with the Old I Millet in relies on an account of the control
043	A The brokerage working with the SELLERIS) is acting an an AGENT for the SELLERIS).
830	B. The brokenage working with the SELLER(S) is acting as a LissTED DUAL AGENT for the SELLER(S), without an ASSASNED AGENT.
321	C. The brokerage working with the SELLERIS) is activity as a LEMTED DRIAL AGENT for the SELLERIS) and has an ASSIGNED AGENT
332	acting solely on behalf of the SELLER(S).
332	
333	XD. The brokerage working with the SELLER(S) is active; as a NONAGENT for the SELLER(S).
334	
335	Each party signing this document confirms that he has received, read and understood the Agency Disclosure Brochure adopted to approved by the ideho real eatate commission and
338	has consented to the relationship confirmed shows. In addition, each party confirms that the brokerand's agency office policy was made available for inspection and review, EACH
237	PARTY UNDERSTANDS THAT HE IS A "CUSTOMER" AND IS NOT REPRESENTED BY A BROKERAGE UNLESS THERE IS A SIGNED WRITTEN AGREEMENT FOR AGENCY
\$38	REPRESENTATION.
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340	BUYERS Initials ()()Date 07-21-07 SELLERS Initials ()()Date
341	SELLET A RUISES () LABOR
342	The flow is privated and distributed by the Liston Association of REALTONS inc. This form has been designed for and is provided only fire use by mal extent professionals who are members of the
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3		Ranch ESD72607
34	B,	
34	32. ENTIRE AGREEMENT: This Agreement contains the	entire Agreement of the parties respecting the matters herein set forth and supersedes a
35	o prior Agreements between the parties respecting such matter	rs. No warrantles, including, without limitation, any warrarny or nabitaoliny, agreements o
35	, -	ipon either party.
35		•
36 85		•
35	5 34. AUTHORITY OF SIGNATORY: If BUYER or SELLE	ER is a corporation, partnership, trust, estate, or other entity, the person executing this
35		and to bind BUYER or SELLER.
85	<i>-</i>	411 94 DT 40-15
35	s 35. ACCEPTANCE: BUYER'S offer is made subject to the ac	cceptance of SELLER on or before (Date)
359 366		f SELLER does not accept this Agreement within the time specified, the entire Earnesi
38		y ·
357		•
363		
364	SEE ATTACHED BUYER'S ADDENDUM(S): (9)	pecify number of BUYER addendum(s) attached.)
363		144
356	BUYER Signature	BUYER (Print Name) STEIGN & COMMENTS
367	Date 7-26-5 Time Market DA.M. P.M.	Phone # Cell # 29/ - 578 - 656 City A State Lef Zip 34000
365 369	LAM. UP.M.	Priorie # CG # 2-7 - 32 2 7 - 52 3
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376	BUYER Signature	BUYER (Print Name)
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379 380	Address	City State Zip
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384	37. SELLER'S SIGNATURES:	
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387	or per grown a Green Salam Kalaman Andread Bry	
388	SIGNATURE(S) SUBJECT TO ATTACHED COUNTER OFFE	:R
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390	IN SIGNATURE(S) SUBJECT TO ATTACHED ADDENDUM(S)	A STATE OF THE STA
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393	SELLER Signature	SELLER (Print Name)
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417	RE21 RESIDENTIAL PURCHASE AND SALE AGREEMENT PAGE 6 of BULLY, 2005 6	
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Beginning at the southwest corner of the southeast quartee of the northwest quarter of section 21, townshif 12 south, range 44 east of the boise meridian, bear lake county, idaho, running thence north 50 rods; thence east 62.5 rods; thence north 50 rods; thence east 62.5 rods; thence north 80 rods; thence east 2530 feet; thence south 15° bast 952 feet; thence south 79° 90' west 318 feet; thence north 15° west 218 feet; thence south 75° 30' west 2764 feet; thence north 164 feet to the place of beginning.

Commencing at a point 11,16 chains east from the northeast corner of the southeast quarter of section 21, township 12 south, range 44 east of the boise meridian, bear lake county, idaho, running thence east 2.00 chains; thence south 13° 45' east 8.87 chains; thence south 75° west 44.63 chains; thence north 89° 55' west 13,66 chains; thence north 30° west 6.54 chains; thence north 75° east 52.50 chains to the place of beginning.

Beginning at the northwest corner of the southeast quarter of the southwest quarter of section 21, township 12 south, range 44 east of the boise meridian, bear lake county, idaho, running thence bast 34.17 chains; thence south 76° 15' West 35.30 chains; thence north 9.12 chains, more or less, to the place of beginning.

COMMENCING AT A POINT 25 RODS, MORE OR LESS, NORTH AND 11 RODS, MORE OR LESS, EAST OF THE SOUTHWEST CORNER OF THE SOUTHWEST QUARTER OF SECTION 21, TOWNSHIP 12 SOUTH, RANGE 44 BAST OF THE BOISE MERIDIAN, BEAR LAKE COUNTY, IDAHO, RUNNING THENCE NORTHEASTERLY 69 RODS, MORE OR LESS, TO 40 ACRE LINE; THENCE NORTH 39 RODS, MORE OR LESS, TO 40 ACRE LINE; THENCE NORTH ALONG 40 ACRE LINE 27 RODS; THENCE SOUTHWESTERLY 112 RODS AND 8 LINKS TO THE LAND OF GEORGE PERKINS; THENCE SOUTHWESTERLY ALONG THE LINE TO THE PLACE OF BEGINNING.

BEGINNING AT THE SOUTHWEST CORNER OF THE SOUTHRAST QUARTER OF THE NORTHWEST QUARTER OF SECTION 21, TOWNSHIP 12 SOUTH, RANGE 44 BAST OF THE BOISE MERIDIAN, BEAR LAKE COUNTY, IDAHO, AND RUNNING THENCE WEST 1239 EBET; THENCE SOUTH 34° WEST 175 FEET; THENCE SOUTH 35° 30° BAST 1494 FEET; THENCE NORTH 75° BAST 3851 FEET, MORE OR LESS, TO THE WEST LINE OF U.S. HIGHWAY 30 NORTH RIGHT OF WAY; THENCE NORTH 15° WEST ALONG SAID RIGHT OF WAY 888 FEET; THENCE SOUTH 75° 30' WEST 2764 FEET; THENCE NORTH 15° WEST 2764 FEET; THENCE NORTH 164 FEET; OF THE PLACE OF BEGINNING.

A PERPETUAL BASEMENT OR RIGHT OF WAY OVER A STRIP OF LAND 20 FEET IN WIDTH LEADING FROM THE COUNTY ROAD TO THE FOLLOWING DESCRIBED REAL PROPERTY:

THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF SECTION 23 IN TOWNSHIP 12 SOUTH OF RANGE 44 BAST OF THE HOISE MERIDIAN, BEAR LAKE COUNTY, IDAHO.

AND RUNNING THROUGH A PART OF THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 21 AND THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 22,

TOWNSHIP 12 SOUTH OF RANGE 44 EAST OF THE BOISE MERIDIAN, BEAR LAKE COUNTY, IDAHO.

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RE-11 ADDENDUM JULY 2006 EDITION PAGE 1 OF 1

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1 2 3 4	("Addendum" means	that the Information	below is added mate			nd/or means the form is being used
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6	ADDRESS:			W.	*	
7	BUYER(S):ST		Charmin			
8	SELLER(S):	hru Bo	er Kanch	s- Inc.		
9	The undersigned pa	rtles hereby agree	as follows:			
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RE-11 ADDENDUM JULY, 2006 EDITION PAGE 1 OF 1

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ALTA Commitment (0/17/08)

ALTA Commisment Form

COMMITMENT FOR TITLE INSURANCE



Stewart Tille Guaranty Company, a Texas Corporation ("Company"), for a valuable consideration, commits to issue its policy or policies of title insurance, as identified in Schedule A, in favor of the Proposed Insured named in Schedule A, as owner or mortgages of the estate or interest in the land described or referred to in Schedule A, upon payment of the premiums and charges and compliance with the Requirements; all subject to the provisions of Schedules A and B and to the Conditions of this Commitment.

This Commitment shall be effective only when the identity of the Proposed insured and the amount of the policy or policies committed for have been inserted in Schedule A by the Company.

All liability and obligation under this Commitment shall cases and terminate six months after the Effective Date or when the policy or policies committed for shall issue, whichever first occurs, provided that the failure to issue the policy or policies is not the fault of the Company.

The Company will provide a sample of the policy form upon request.

This commitment shall not be valid or binding until countersigned by a validating officer or authorized signatory.

IN WITNESS WHEREOF, Stewart Title Guaranty Company has caused its corporate name and seal to be harsunto affixed by its duly authorized officers on the date shown in Schedule A.

Chalman of the Soard

Northern Trie Co. of ideha Company Name

004-UN ALTA Commitment (8/17/08)

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CONDITIONS

- 1. The term mortgage, when used herein, shall include deed of trust, trust deed, or other security instrument.
- 2. If the proposed insured has or acquired sotusi knowledge of any defect, lien, encumbrance, soverce claim or other matter effecting the estate or interest or mortgage therein covered by this Company in cone other than those shown in Schedule 3 hereof, and shell fell to disclose such knowledge to the Company in writing, the Company shell be relieved from liability for any loss or damage resulting from any act of reliance hereon to the extent the Company is prejudiced by fellure to so disclose such knowledge. If the proposed insured shell disclose such knowledge to the Company, or if the Company otherwise acquires actual knowledge of any such defect, lien, encumbrance, adverse claim or other matter, the Company at its option may amend Schedule B of this Commitment accordingly, but such amendment shell not relieve the Company from liability previously incurred pursuant to paragraph 3 of these Conditions.
- 3. Liability of the Company under this Commitment shall be only to the named proposed insured and such parties included under the definition of Insured in the form of policy or policies committed for and only for satural loss incurred in reliance hereon in undertaking in good faith (a) to comply with the requirements hereof, or (b) to eliminate exceptions shown in Schedule B, or (c) to acquire or create the estate or interest or manages thereon covered by this Commitment. In no event shall such liability exceed the amount stated in Schedule A for the policy or policies commitment and conditions and the Exclusions from Coverage of the farm of policy or policies committed for in favor of the proposed insured which are hereby, incorporated by reference and are made a part of this Commitment except as expressly modified herein.
- 4. This Commitment is a contract to issue one or more title insurance policies and is not an abstract of title or a report of the condition of title. Any action or actions or rights of action that the proposed insured may have or may bring against the Company adaing out of the status of the title to the salate or interest or the atatus of the mortgage thereon covered by this Commitment must be based on and are subject to the provisions of this Commitment.
- 5. The policy to be issued contains an arbitration clause. All arbitrable matters when the Amount of insurance is \$2,000,000 or less shall be arbitrated at the option of either the Company or the Insured as the exclusive remedy of the parties. You may review a copy of the arbitration rules at a http://www.alla.org/>.



All notices required to be given the Company and any statement in writing required to be furnished the Company shall be addressed to it at P.O. Bex 2029, Houston, Texas 77252.

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P.04

Cloting/Escrow inquiries to:
LORI THORNOCK,
ESCHOW OFFICER
All inquiries regarding this report
should be directed to:
BARBARA BAIRD,
TITLE OFFICER

SCHEDULE A

Order No. NTHL-1183

- 1. Effective Date: May 30, 2007 @ 5:00 PM
- 2. Pollay or policies to be issued:

A. ALTA Owner's (6/17/05)

Standard Coverage

Proposed Insured: THREE BAR RANCHES, INC.

Amount \$800,000.00 Premium: \$2,330.00

B. ALTA Loan (6/17/06)

Coverage

Proposed Insured:

Amount: \$0.00 Premium: \$0.00

C. Budorsements:

\$0.00

- The estate or interest in the land described in the Commitment and covered herein is: PRE SIMPLE
- 4. Title to the estate or interest referred to herein is at the effective date hereof yested in:

roger L. Stephens and Barbara L. Stephens, trustees of the roger L. and Barbara L. Stephens family trust

5. The land referred to in this Commitment is in the State of IDAHO, County of BEAR LAKE and le described as follows:

See Attached Exhibit "A"

PROPERTY ADDRESS:

BEAR LAKE COUNTY

13/ 18

Fax: 2009470881

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P. 05

"EXHIBIT A"

BEGINNING AT THE SOUTHWEST CORNER OF THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF SECTION 21, TOWNSHIP 12 SOUTH, RANGE 44 EAST OF THE BOISE MERIDIAN, BEAR LAKE COUNTY, IDAHO, RUNNING THENCE NORTH SO RODS; THENCE EAST 62.5 RODS; THENCE NORTH SO RODS; THENCE EAST 257.5 RODS, THENCE SOUTH 50 RODS; THENCE WEST 2530 FEST; THENCE SOUTH 15° EAST 952 FEST; THENCE SOUTH 75° 30' WEST 318 FEST; THENCE NORTH 15° WEST 218 FEST; THENCE SOUTH 75° 30' WEST 318 FEST; THENCE NORTH 15° WEST 218 FEST; THENCE SOUTH 75° 30' WEST 2764 FEST; THENCE NORTH 164 FEST TO THE PLACE OF SEGMNING.

Commencing at a point 11,16 chains east from the northeast corner of the Southeast Quarter of Section 21, Township 12 south, range 44 east of the Boise Meridian, Bear Lake County, Idaho, running thence east 3.00 chains; thence South 13° 45' east 3.87 chains; thence Bouth 75° West 44,69 chains; thence north 80° 35' West 12,66 chains; thence North 30° West 6.54 chains; thence North 75° east 52.50 chains to the place of Beginning.

BEGINNING AT THE NORTHWEST CORNER OF THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 21, TOWNSHIP 12 SOUTH, RANGE 44 HAST OF THE BOISE MERIDIAN, BEAR LAKE COUNTY, IDAHG, RUNNING THENCE HAST 14.17 CHAINS; THENCE SOUTH 76° 15' WEST 35.30 CHAINS; THENCE NORTH 9.12 CHAINS, MORE OR LESS, TO THE PLACE OF BEGINNING.

Commencing at a point 26 rods, more or less, north and 11 rods, more or less, east of the southwest corner of the southwest quarter of section 21, township 12 south, range 44 east of the boise meridian, bear lake county, idaho, running thence northeasterly 69 rods, more or less, to 40 acre line; thence north 59 rods, more or less, to 40 acre line; thence north along 40 acre line 27 rods; thence southwesterly 112 rods and 8 lines to the land of george perkins; thence southwesterly 112 rods and 8 lines to the land of george perkins;

Beginning at the southwest corner of the southeast quarter of the northwest quarter of section 21, township 12 south, range 44 east of the hoise meridian, bear lake county, idaho, and running thence west 1239 eret; thence south 34° west 175 feet; thence south 35° 10' bast 1494 feet; thence north 75° east 3831 feet, more or less, to the west line of U.S. Highway 30 north right of way; thence north 15° west along said right of way 388 feet; thence south 75° 10' west 218 feet; thence north 15° west 218 feet; thence south 75° 30' west 2764 feet; thence north 164 feet to the place of beginning.

A PERPETUAL BASEMENT OR RIGHT OF WAY OVER A STRIP OF LAND 20 FEET IN WIDTH LEADING FROM THE COUNTY ROAD TO THE FOLLOWING DESCRIBED REAL PROPERTY:
THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF SECTION 22 IN TOWNSHIP 12 SOUTH OF RANGE 44 BAST OF THE HOISE MERIDIAN, BEAR LAKE COUNTY, IDAHO.
AND RUNNING THROUGH A PART OF THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 21 AND THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 22,
TOWNSHIP 12 SOUTH OF RANGE 44 BAST OF THE BOISE MERIDIAN, BEAR LAKE COUNTY, IDAHO.

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SCHEDULE B - SECTION II

Order No. NTBL-1183

Subsdule B of the policy or policies to be issued will contain exceptions to the following matters unless the same are disposed of to the satisfaction of the Company.

A. Defects, liens, encumbrances, adverse claims or other matters, if any, oriented, first appearing in the public records, or standing subsequent to the effective date hereof but prior to the date the proposed insured acquires of record for value the estate or interest or mortgage thereon covered by this Commitment.

B. General Exceptions:

- Taxes or assessments which are not shown as existing liens by the records of any taxing authority that levies (1)
- taxes or assessments on real property or by the public records.*

 Any facts, rights, interest, or claims which are not shown by the public records but which could be (2)ascertained by an inspection of said land or by making inquiry of pursons in possession thereof.* Ensements, claims of excenses or encumbrances which are not shown by the public records.*
- (3) (4) Any encroachment, encombrance, violation, variation, or adverse circumstance affecting the title including discrepancies, conflicts in boundary lines, shortage in area, or any other facts that would be disclosed by an accurate and complais land survey of the land, and that are not shown in the public records."
- (a) Department mining claims; (b) reservations or exceptions in patents or in Acts authorising the issuance thereof; (c) water rights, claims or title to water, whether or not the matters excepted under (a), (5) (b), or (c) are shown by the public records.*
- (6) Any liens, or rights to a lien, for services, labor or material theretofore or hereafter furnished, imposed by law and not shown by public records.4

*Paragraphs 1, 2, 3, 4, 5, and 6 will not appear as printed exceptions on extended coverage policies, except as to such parts thereof which may be typed as a Special Exception in Schedule B-Section II,

(See Special exceptions beginning on the next page)

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SCHEDULE B - SECTION II

Order No. NTBL-1183

SPECIAL EXCEPTIONS:

Taxes for the year 2007 are a lien, not yet due or payable.

Taxes for the year 2006 have been paid in the smount of \$183.54, Tax Serial No. 3166

Taxes for the year 2007 are a lieu, not yet due or payable. Taxes for the year 2006 have been paid in the amount of \$1,134.00. Tax Serial No. 3167

Taxes for the year 2007 are a life, not yet due or payable. Taxes for the year 2006 have been paid in the amount of \$135.10. Tax Sorial No. 3168

- 2. Said property is included within the taxing essessment district of BEAR LAKE COUNTY and may be subject to the charges and assessments thereof. (Charges are current according to the information available from the county records.)
- Rights of way for any roads, ditches, fences, canals, or transmission lines now existing over, under or seroes said property. 3,
- ALL BASEMENTS AND RIGHT OF WAYS ALONG BASTERLY LINE OF SAID FARCEL FOR ROADS AND UTILITIES.
- 3. Mineral rights, claims or title to minerals in or under the land, including but not limited to metals, oil, gas, coal, or other. hydrocarbons, sand, gravel or atoms, and easements or other rights relating thereto, whether express or implied, recorded or unrecorded.
- DEED TO STATE OF IDAHO FOR U.S. HIGHWAY 30

RECORDED:

MAY 22, 1956

71884

INSTRUMENT NO .:

AUGUST 1, 1956

RECORDED: INSTRUMENT NO .:

72172

RECORDED:

SEPTEMBER 20, 1956

INSTRUMENT NO .:

72343

RECORDED:

NOVEMBER 15, 1960

INSTRUMENT NO.:

79310

(Continued)

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18/ 18

SCHEDULE B - SECTION II

Order No. NTBL-1183

SPECIAL EXCEPTIONS CONTINUED:

7. An Besement for the purpose shown below and rights invidental thereto as set forth in a document

Granted to:

UTAH POWER AND LIGHT COMPANY

Purpose: '

· Public Utilities Essement

Dated: . Reporded:

SEPTEMBER 5, 1957 FEBRUARY 28, 1958

Entry No.:

74487 & 74488

8. RIGHT OF WAY OPTION

RECORDED:

AUGUST 21, 1973

INSTRUMENT NO.

101374

.9. OIL AND GAS LEASE

RECORDED:

FEBRUARY 11, 1976 ·

INSTRUMENT NO .: -

107445

CORRECTION OF DESCRIPTION IN OIL AND GAS LEASE

RECORDED:

JULY 9, 1976

INSTRUMENT NO .:

108991

ASSIGNMENT OF OVERRIDING ROYALTY INTEREST

RECORDED:

JUNE 24, 1977

INSTRUMENT NO.:

112523

ASSIGNMENT OF OIL AND GAS LEASES

RECORDED:

JULY 18, 1977

INSTRUMENT NO.:

, 112668

Correction of Description in oil and gas lease

RECORDED:

DECEMBER 9, 1977

INSTRUMENT NO.: 113901

ASSIGNMENT OF OVERRIDING ROYALTY INTEREST

RECORDED: INSTRUMENT NO.: DECEMBER 28, 1977 114109

PARTIAL ASSIGNMENT OF OIL AND GAS LEASE

RECORDED:

AUGUST 13, 1980

. INSTRUMENT NO.:

122412

(Continued)

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Order No. NTBL-1 183

SPECIAL EXCEPTIONS CONTINUED:

RENTAL DIVISION ORDER AND DESIGNATION OF DEPOSITORY

RECORDED:

MARCH 91, 1981

INSTRUMENT NO.:

124283

Assignment of Oil and Gas Lease Recorded: March

MARCH 31, 1981

INSTRUMENT NO .: 124284

10. RIGHT OF WAY BASEMENT

RECORDED

MAY 26, 1914

INSTRUMENT NO.

10835, 10836, 10837 & 10838

11. OFFICIAL MINUTES

· RECORDED:

MARCH 7, 1997

INSTRUMENT NO.:

166238

NOTE: The policy of title insurance will include an arbitration provision. The company or the insured may demand arbitration. Arbitrable matters may include, but are not limited to, any controversy or claim between the Company and the insured erising out of or relating to this policy, any service of the Company in company on this is issuance or the breach of a policy provision or other obligation. Please ask your exercity or title officer for a sample copy of the policy to be issued if you with to review the arbitration provisions and any other provisions pentalping to your Title Insurance coverage.

NOTE: Judgments were checked on the following names, and none were found of records

THREE BAR RANCHES, INC. ROGER L: STEPHENS and BARBARA L. STEPHENS

NOTE: In the event this transaction falls to close, a cancellation fee may be charged for services rendered in accordance with the rates that are on file with the Commissioner of Insurance of the State of Idaho.

Examiner

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P. 10

NTBL-1183

COMMITMENT FOR TITLE INSURANCE

SCHEDULE B-SECTION 1 REQUIREMENTS

THE FOLLOWING ARE THE REQUIREMENTS TO BE COMPLIED WITH

- (a) Payment to or for the account of the grantors or mortgagors of the full consideration for the estate or interest to insured.
- (b) Documents satisfactory to us creating the interest in the land and/or the mortgage to be insured must be signed, delivered and recorded.
- (c) The Company hereby reserves the right to add additional special exceptions to coverage and/or requirements for the lessance of my policy pursuant to this commitment upon its receipt and review of additional information including, but not limited to, any items herein below.
 - . In addition to the foregoing, the following requirements must be compiled with, to wit:
- 1. PURCHASE AND SALE AGREEMENT.
- 2. We require copies of the Trust Agreement for ROGER L. AND BARBARA L. STEPHENS FAMILY TRUST.
- 3. We require copies of the Articles of Corporation for THREE BAR RANCHES, INC.
- 4. Deed conveying title to the purchasers, executed by: ROGER L. STEPHENS and BARBARA L. STEPHENS, TRUSTERS OF THE ROGER L. AND BARBARA L. STEPHENS FAMILY TRUST.
- 5. Three Bar ranches, Inc. needs to renew articles of incorporation with the state of utah.



FAX COVER SHEET

DATE: 8/1/07
FAX# 866-669-6096
TO: LaurA RE: Cammings
FROM: Lore
NUMBER OF PAGES TO FOLLOW: 4 REPC (S)
COMMENTS:

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680 North 4th Street Montpelier, ID 83254 (208)847-2567 Fax (208) 847-0881

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NE-21 REAL ESTATE PURCHASE AND SALE ACCRECATION

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[D]. ADDITIONAL, FRANCIAL TERMS:

[E] Additional financial terms are expected under the heading "OTHER TERMS ANDIOR CONDITIONS" (Section 4).

[I] Additional financial terms are expected under the heading TOTHER TERMS ANDIOR CONDITIONS" (Section 4).

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94	writ, and rights of way and essembnic established or of record. Lians, ensumbnances or describ to be discharged by SELLER may be paid out of purchase
98	money at date of closing. Ne liens, encombrances or defects which says to be distributed or seasoned by BUYER or to which title is taken subject to, exist
100	whass otherwise apacified in this Agreement.
102	# TITE C MARKET TO A SEPTEMENT TO A SEPTEMENT AND A SEPTEMENT
102	6. TITLE INSURANCE: there may be types of title insurance coverages available other than those listed before and parties to this agreement are solvised to talk to a title company about any other coverages available.
104	A A A A A A A A A A A A A A A A A A A
105	(A). TITLE COMMITMENT: Prior to closing the transaction. If BELLER or BUYER is that furthin to BLIVER a commitment of a title insurance policy
106	showing the condition of the Sile to said promises. BUYER shall have business thereof from research of the commitment or not fewer than overly four (24)
167	nouse prior to closing, within which to disject in which to the condition of the size see buy in the compliances. If BUYER does not as object, BUYER size de
104	operated to have accepted the conditions of the first. It is seprent that if the first premises is not marketable, or connot be made so withinindicate
108	days) after notice containing a written statement of defect in solvenes to SELLER, BUYER'S Remost Money deposit will be noticened to BUYER and SELLER
110	sticil play for the cost of fills insurance concellation for, macrow end legal feet, if any.
111	IBL TITLE COMPANY: The newtice worse that April Thistin This commonly located at M. U. Montpelie
172	Sh. TITLE COMPANY: The parties agree that I B. Th. Government to Company to cated at N. U Mouthe had provide the title portry and presiminary report of commismus.
114	E. a. a. a. a. a. a. b. a. d. a. a. a. a. a. b. a. c. b. a.
115	ICL STANDARD CONTRACE CONNER'S POLICY. SELLER shall within a reasonable time after closing furnish to BLYER a site insurence policy in the
416	emount of the purchase price of the premises should a marketable and beautiful the same encumber one defects eigenstance and out in this
117	Agreement to be discharged or essured by SUYER unless observable provided herein. The risk secured by the title company in the standard coverage
118	. policy, in United to mentions of public record. DUYER shall receive a UTA/ALTA Homeowner's Policy of Tale Insurance, A title company, at BUYER's
110	inquest, can provide information about the availability desirability, powerage and cost of various tile framework coverages and endorsements. If BUYER
126	Desires was coverage other than that had included by this parasprach. BUVER shall have the track the body in within and pay any increase in cost unices otherwise
121	provided herein.
1 22	ATTA PROMISE AND ADDRESS OF THE PARTY OF THE
123	D. STENDED COVERAGE LENDER'S POLICY (Mortgages policy) The lander may require that BUYER (Bostower) funds to an Extended Coverage
124	Lendor's Policy. This extended coverage lander's policy considers matters of putting regard and additionally insures apparent access register mot shown in the
1 (2)) 1 (2)5	public record. This extended coverage lander's pulley is somey for the benefit of the lender and only protects the lander.
127	A MECHANICE (ISSE - REMEDA) ANTENDED DON ACTOR ACTIVE AND ANTENDED STREET AND ACTIVE ACTIVE AND AC
.122	8. MECHANC'S LIENS - GENERAL CONTRACTOR DISCLOSURE STATEMENT NOTICE: BUYER and SELLER are hereby notified that, subject to leake 545-525 at use, a "Contractor" must provide a Disclosure Statement to a homeowner that describes contain rights
124	afforded to the homeowner (e.g. fan wedners, general feeling insurence, accorded policies of title transacce, europ bonds, and sub-contractor
120	Information). The Disclosure Statement heart he given to a horizonanar prior to the General Contractor entering into any contract in an amount enceeding
191	\$2,000 with a homeowner for construction, alternation, repair, as when improvements to real property, as with a residential real property purchaser for the
128	purchase and sale of newly constructed property. Such disclosure is the responsibility of the General Confeder and it is not the duty of your agent to
122	obtain this information on your behalf. You are advised to consult with any General Contractor subject to ideno Code \$45-525 of seq. regarding the
134	General Contractor Disclosure Statement.

Fax: 2098470881

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FAX No. 18017562087

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Far: MARATORRY

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P.C

Beginning at the southwest corner of the southeast quarter of the northwest quarter of section 21, townself 12 bouts, hange 44 east of the schee merican, sear lake county, inabo, ridning there north 80 ridg terme hart 61.5 ridg; there north and court it have east 25% bods, thence court in bods; thence west 1550 feet, thence south is east 950 rest; thence south 75° 50° west 115 rest; thence north 15° west 216 pest; thence south 75° 10° west 2764 feet; thence north 164 feet to the place of beginning.

Commenciate at a point 11.16 chadib east from the northeast commence the scuthfast culture of rection 21, township 12 scuthe range 46 east of the bonse meetical bear late county, idaho, blinning thence east 260 chades thence scuth 13-49 east 3.67 chades thence bouth 73- west 44.69 crades; thence north 89- 25- west 13-55 chades; thence

Beginning at the northwest curder of the southbast quarter of the southwest quarter of Seution 21, townseep 12 south, range 44 bast of the bosse Lebelsian, bran lake county, idabl, Eudenio Thence East M.17 Chaine Thence South 79 19 west 1836 Chaine Thence North 5.18 Chains, more or less, to the place of recenting.

Commencing at a point 26 bods, Model or Less, North and 11 bods, Model of Less, Bart of the solithwest ocener of Yel Scrithwest (Martel of Escient 21, Tuwnship 12 bojte, Pange 44 bast of the bose merican, bear lake county, Daho, Running Ternoz Northeasterly 69 bods, More or Less, To 44 acre line, Thence north 89 bods, More or Less, To 40 acre line; Thence bast along said line 26 bods, Teience morth along 46 acre Line 27 bods, Tremce solutiversterly 112 bods and 8 lorgs to the Lawd of George Pereine; Thence southwesterly along the line to the flace of beginning.

Beginning at the routhwest corner of the soutebast quarter of the northwest cuarter of Section 21, township 12 Boute, range as east of the house westlian, bear lake county, diable, and element there west 120 keet; there soute 14 west 173 keet; indice south 15° by east 194 keet; there north 15° by east 195 keet, mote west line of u.e. eighant 10 north breet of way; there meete 15° west along said breet of way she fest; there egits 170 keet; there except 15° west 216 keet; there except 15° way she fest; there except 166 keet to the place of beginning.

A PERFETUAL EASEMENT OR INCHT OF WAY OVER A STRIP OF LAND 20 MEET IN WIDTH LEADEND FROM THE CLUNITY EGAD TO THE RILLOWERS DESCRIBED FRAL PROPERTY:
THE SOUTHEAST CRARTER OF THE ROPTEWEST QUARTER OF SECTION 22 IN TOWNSEIP IS BRUTE OF RANGE 44 EAST OF THE BOUGE MORIDIAN, BEAR LAKE COUNTY, IDAIES.
AND BURNING THROUGH A PART OF THE BUTTHEAST QUARTER OF THE MORIDIANT QUARTER OF SECTION 21 AND TER SOUTHWAST QUARTER OF THE ROPTEWEST QUARTER OF SECTION 22.
TOWNSHIP IS SOUTH OF RANGE 44 EAST OF THE BOHE MORIDIAN, EBAR LAKE COUNTY, IDARO.

Reply NT 2nd Moth

RE-11 ADDENOUM JULY 2008 EDITION PAGE 1 OF 1

M

Date: 34 No. 7 THIS IS A LEGALLY BINDING CONTRACT. READ THE ENTIRE DOCUMENT INCLUDING ANY ATTACHMENTS. IF YOU HAVE ANY DUESTIC CONBULT YOUR ATTORNEY AND/OR ACCOUNTANT BEFORE SIGNING. This is an ADDENDUM to the Purchase and Sale Agreement. (Addendum' means that the Information below is added material for the agreement (such as lists or descriptions) and/or means the form is being to change, correct or revise the agreement (such as modification, addition or deletion of a term!). PURCHASE AND SALE AGREEMENT DATED: 7 207 (D# 1-50702) ADDRESS: New 30 N. or MonTpe (1eV) BUYER(S): There Roy Rounds Inc. The undersigned parties hereby agree as follows: SELLER(S): The Lord Roy Rounds Inc. SELLEY CThree Roy Rounds Inc. SELLEY CThree Roy Rounds Inc. ALL Teymon Question of a series of the condition of the conditio	THIS IS A LEGALLY BINDING CONTRACT. READ THE ENTIRE DOCUMENT INCLUDING ANY ATTACHMENTS. IF YOU HAVE ANY DUESTIC CONSULT YOUR ATTORNEY AND/OR ACCOUNTANT BEFORE SIGNING. This is an ADDENDUM to the Purchase and Sale Agreement. ("Addandum" means that the information below is added material for the agreement (such as lists or descriptions) and/or means the form is being to change, correct or revise the agreement (such as modification, addition or deletion of a term!). PURCHASE AND SALE AGREEMENT DATED: 7. 2.07 ID # £ 50 7 0 2 ADDRESS: BUYER(S): SELLER(S): There is a revised the agreement of the agreement (such as lists or descriptions) and/or means the form is being to change, correct or revise the agreement (such as lists or descriptions) and/or means the form is being to change, correct or revise the agreement (such as lists or descriptions) and/or means the form is being to change, correct or revise the agreement (such as lists or descriptions) and/or means the form is being to change, correct or revise the agreement (such as lists or descriptions) and/or means the form is being to change. BUYER(S): SELLER(S): SELLER(S): There is a such as a such		RE-11 ADDENDUM #	(1,2,3, etc.)	
THIS IS A LEGALLY BINDING CONTRACT. READ THE ENTIRE DOCUMENT INCLUDING ANY ATTACHMENTS. IF YOU HAVE ANY QUESTIC CONSULT YOUR ATTORNEY AND/OR ACCOUNTANT BEFORE SIGNING. This is an ADDENDUM to the Purchase and Sale Agreement. ("Addandum" means that the information below is added material for the agreement (such as lists or descriptions) and/or means the form is being to change, correct or revise the agreement (such as modification, addition or deletion of a term!). PURCHASE AND SALE AGREEMENT DATED: 7. 2.07 ID # 15.50.70.2 (ADDRESS: Aug.) 30 N. of MONTRE (ICV.) BUYER(S): SELLER(S): Three Roy Ranched Tro. The undersigned parties hereby agree as follows: Selley C. Three Roy Ranched Tro. 299 vels TO Selley Three Posyssion in Full, TO All Treyms Question of a term!) And Condition or deletion of a term!).	THIS IS A LEGALLY BINDING CONTRACT. READ THE ENTIRE DOCUMENT INCLUDING ANY ATTACHMENTS. IF YOU HAVE ANY QUESTIC CONSULT YOUR ATTORNEY AND/OR ACCOUNTANT BEFORE SIGNING. This is an ADDENDUM to the Purchase and Sale Agreement. ("Addendum" means that the information below is added material for the agreement (such as lists or descriptions) and/or means the form is being to change, correct or revise the agreement (such as modification, addition or deletion of a term).) PURCHASE AND SALE AGREEMENT DATED: 7. 2.07 ADDRESS: BUYER(S): SELLER(S): There Ray Ranched The The undereigned parties hereby agree as follows: SPLYY (Thyris Ray Ranches True) 99 vels TO SELLER(S): SPLYY (Thyris Ray Ranches True) 99 vels TO SELLER(S): The undereigned parties hereby agree as follows: 1. SPLYY (Thyris Ray Ranches True) 99 vels TO SELLEY Their POSYSSION in Fill, TO All Tevms Ranches Conditions To ye mach in addition to Thyrins Qlyraddy 99 vels TO ye mach in addition to Thyrins Qlyraddy 99 vels TO ye mach in addition to Thyrins Qlyraddy 99 vels TO Seller Buyer TO Sure database. And Clesse By Aug 15 ov Before	REALTOP#	Date: July 24.07		a reassured t
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To the extent the terms of this ADDENDUM modify or conflict with any provisions of the Purchase and Sale Agreement including all p		Addendums or Counte	r Offers, these terms shall control. All other terms of th	e Purchase and Sale Agreement includi	ng all p
Addendums or Counter Offers, these terms shall control. All other terms of the Purchase and Sale Agreement including all p.	Addendums or Counter Offers, these terms shall control. All other terms of the Purchase and Sale Agreement including all p	Addendums or Coun	ier Offers not modified by this ADDENDUM shall rem	ain the same. Upon its execution by both	parties,
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Addendums or Counter Offers, these terms shall control. All other terms of the Purchase and Sale Agreement including all proceedings of the Addendums or Counter Offers not modified by this ADDENDUM shall remain the same. Upon its execution by both parties, agreement is made an integral part of the aforementioned Agreement. BUYER: Date: 7-24-02	Addendums or Counter Offers, these terms shall control. All other terms of the Purchase and Sale Agreement including all p Addendums or Counter Offers not modified by this ADDENDUM shall remain the same. Upon its execution by both parties, agreement is made an integral part of the aforementioned Agreement. BUYER: Date: 7-27-02		mos .	Date:	
BUYER: Oate:	Addendums or Counter Offers, these terms shall control. All other terms of the Purchase and Sale Agreement including all p Addendums or Counter Offers not modified by this ADDENDUM shall remain the same. Upon its execution by both parties, agreement is made an interfer part of the aforementioned Agreement. BUYER: Date: 7-24-02 Date:	BUYER:		Date:	
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RE-11 ADDENDUM HILY, 2006 EDITION PAGE 1 OF 1

Fax: 2088470881

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P.06

RE-21 REAL ESTATE PURCHASE AND SALE AGREEMENT



THIS IS A LEGALLY BINDING CONTRACT, READ THE ENTIRE DOCUMENT INCLUDING ANY ATTACHMENTS. IF YOU HAVE ANY QUESTIONS, CONSULT YOUR ATTORNEY AND/OR ACCOUNTANT BEFORE SIGNING.

1	1 ID#_ESD70207 B DATE 7-201	grafinadora no mentro confessor de propositivo de describir de la confessor de
3	ISTING AGENCY FXT Regular of B.L. Office Phone # Fax#	
4	4 Liettra Agent Daro Thuy Rolls E-Mail Phanes #	
5	5 SELLING AGENCY CAT ROATY of BL Office Phone # \$2.7-5701 Fax # 84	7-5203
8	E-Mail Phone #	
ř	& a DINES. Thurs. Ra Court - Tour	(Hereinefter called
B	"BUYER") agrees to purchase, and the undersigned SELLER agrees to sell the following described real estate hereinafter referre	id to as "PREMISES"
10 11		人
12	12	7727
14	OR Legal Description Attached as addendum # (Addendum must accompany original offer.)	
15 15 17	payable upon the following TERMS AND CONDITIONS (not including closing costs):	DOLLARS,
	4 to 1 tidlitambille terteret trainet til faite trimen mann file en errent bengen ber chan	
20	S S O O O COME (A). EARNEST MONEY: BUYER hereby deposits ONL TWO LE MALE	DOLLARS as
2! 22	Earnest Money evidenced by: cash / personal check cashier's check note (due data):	Vanev to be deposited
23	in trust account (Lupon receipt, or 🔲 upon acceptance by all parties and shall be hald by: 🔲 Listing Broker 🔲 Seiling Broker	
24 25	Lot 616 percent at a to believe that the content mile at some at a content mile at some at a content at a content mile at some at a content mile at a co	
25	(B), ALL CASH OFFER: 💆 NO 🖂 YES if this is an all cash offer do not complete lines 32 through 81,	fill blanks with
27 25	a familianita markit at the terminant control of a markit that the transformation of the transformation of the terminant of t	GENCY. Itles, evidence of
2# 50	sufficient funds and/or proceeds necessary to close transaction. Acceptable documentation includes, but is not limited to, a copy	of a recent bank or
11	in the trial of an interval of the said of	
2 \$	retincted including mortgage insurance, through FHA, VA, CON	ENTIONAL, [] IHFA,
14	RURAL DEVELOPMENT, OTHER with interest not to exceed % for a period of year	r(s) al: Fixed Rate
5	Other BLYER shall pay no more thanpoint(s) plus origination fee if any. SELLER shall pay no more Any reduction in points shall first accrue to the benefit of the BUYER SELLER Divided Equally N/A.	manpoint(a).
7 8	SEGOND LOAN of \$ with interest not to exceed % for a period of yes	wol or Firmed Rate
ø.	Other BUYER shall pay no more than point(s) plus origination test if any. SELLER shall pay no more than	point(s). Any
0 1	☐ Other BUYER shall pay no more than point(s) plus origination fee if any. SELLER shall pay no more than reduction in points shall first accrus to the benefit of the ☐ BUYER ☐ SELLER ☐ Divided Equally ☐ N/A.	
â a	LOAN APPLICATION:BUYER [] has applied [] shall apply for such loan(e) withinbusiness day(s) of SELLER'S access	ptance. Within
4	business days of finel acceptance of all parties, BUYER agrees to furnish SELLER with a written confirmation showing credit report, income verification, debt ratios in a manner acceptable to the SELLER(5) and subject only to satisfactory appl	eisal and final lender
5 8	underwriting, if such written confirmation is not received by SELLER(S) within the strict time afforted, SELLER(S) may at the	elr option cancel this
	agreement by notifying BUYER(S) in writing of such canositation withinbusiness day(s) after written confirmation was required to canoal within the strict time period specified as set forth herein, SELLER shall be deemed to have accepted such written confirmation.	llon of lender approval
i	and shall be deemed to have elacted to proceed with the transaction. SELLER'S approval shall not be unreasonably withheld. If an by lender, the property must appraise at not less than purchase price or BUYER'S Earnest Money may be returned at BUYE	
,	may also apply for a loan with different conditions and costs and close transaction provided all other terms and conditions o	
	fulfilled, and the new loan does not increase the costs or requirements to the SELLER FNA / VA: If applicable, it is expressly agreed that notivithstanding any other provisions of this contract, BUYER shall not be obli-	eated to recognists the
	purchase of the property described herein or to incur any penalty or forfeiture of Earnest Money deposits or otherwise unless SUY	ER has been given in
	accordance with HUD/FHA or VA requirements a written statement by the Federal Housing Commissioner, Vetarans Admi Endorsement lender setting forth the apprecised value of the property of not less than the sales price as stated in the contract. SELL!	ilstration or a Direct
	required by FHA CLVA.	TV officers to half leas
\$	\$2 12 Sizio (D). ADDITIONAL FINANCIAL TERMS:	
	Additional financial terms are specified under the heading "O'THER TERMS AND/OR CONDITIONS" (Section 4). Additional financial terms are contained in a FINANCING ADDENDUM of same date, attached hereta, signed by both parties	
	Line E below is the total of the Purchase Price minus Lines A, C, and D. Only use numbers in these ill	78E.
\$ ₋₁	\$ 202.00 (E). APPROXIMATE FUNDS DUE FROM BUYERS AT CLOSING (Not including closing cost to be paid by BUYER at closing in GOOD FUNDS, includes: cash, electronic transfer funds, certified check or cashler's cl	
	of above loans being Assumed or taken "subject to", any net differences between the approximate balances and the actual bet	
	shall be adjusted at ploaing of escrow in: Cash Other:	•
Bu	, , , , , , , , , , , , , , , , , , ,	Date
	This form is printe grant distributed by the (date Association of REALTORSS), Inc. This form has been designed for and is provided only for use by real estate profuseions National Association of REALTORSS), USE BY ANY OTHER PERSON IS PROHIBITED. Capyright Mahn Association of REALTORSS), Inc. All rights reserved.	क भीति काम राज्यातीयस्ट वर्ग हिन्द दे
RE	RE-21 RESIDENTIAL PURCHASE AND BALE AGREEMENT PAGE 1 of 6 JULY STOR EDITION	

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153 154	1 1 Peta 1 mer e r 1 n. men men a bestebarte a ferminant	-3146 HARY	<u> </u>		ocatamination of the To I quantification.
165	B INSPECTION:	•			
158	(A) BUYER ohooses	🖔 to have inspection [not to have inapaction. If	BUYER chooses not to have inspe-	ction skip section 90. BUYER shall
157	have the right to conduct ins	pections, investigation	s, tests, surveys and other si	udias at BUYER'S expense. BUYE	dehall, withinbusiness
156	day(s) of acceptance, comp	lete these inspections	and give to SELLER written	notice of disapproved of items. BU' e qualifications to conduct inspection	YER is strongly advised to exercise
159	these rights and to make BU	AFFICE OWN BESECOOD OF	budeesrouss with shorobus	e quemications to control inspection	s in the artife property.
151		REQUIREMENT. If an	oplicable: "For Your Protec	tion: Get a Home Inspection", HUI	92564-CN must be signed on or
182	before execution of this ag			•	•
183					
164	(C), SATISFACTION	REMOVAL OF INSP	PECTION CONTINGENCI	ES: - DELLES univer neter et dicembra	ed Nems, BUYER shall condusively
165 166	he deemed to have: (e) con	noes not within the sur maleted all insmediant	a une pento apachieu give v Linuashaethana naview of s	policable documents and disclosure	es; (b) elected to proceed with the
197	transaction and (o) assumed	ell liability, responsibili	ty and expense for repairs or	corrections other than for items which	th SELLER has otherwise agreed in
168	writing to repair or correct.		,		
150	-				d de la companya de l
170	2). If BUYER of	ices within the strict ti	me period specified give to	SELLER written notice of deepprove	in which to respond in writing. The
171	SELLER perunent section	(E) or written inspec	voor reports. Seller sna nortfor hu the & IVEBS in H	rolr letter or may elect not to do so	if the SELLER agrees to correct the
178					d to dosing. This will remove the
174	BUYER'S inspection conting		,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,	,	_
178					and a state of the
176					strict time period specified, then the
177 178				their being responsible for correct ith the transaction and will receive the	ng these deficiencies or giving the extrement Money back
17B	SELEN WIDER HORSE WIGHT	ousereas day	a niat area win that continues as	IN DE BRIDGERMAN COLLEGE AND CONTRACT OF STREET	th mottement started mercet
180	4), If BUYER do	as not give euch writte	en notice of cancellation with	n the strict time periods specified, BL	IYER shall conclusively be deemed
181	to have elected to proceed w	vith the transaction wit	hout repairs or corrections of	ther than for items which SELLER	has otherwise agreed in writing to
182				BUYER shall keep the property free	
183				and repair any damages ansing fit the prior sonsent the prior consent of	of SELLER unless required by local
180	law.	(sorter policing of sorti	IB transmist of Societiment .	in the same and birds actions	
185			<u> </u>		
187	10. LEAD PAINT DISCLO	JSURE: The aubject	property 🔼 is 🗌 is not def	l gnänsgar "gnisuori tegraf" ea beni	and-based paint or lead-based paint
188 189	hazarda, if yes, BUYER here	by acknowledges the	following: (a) BUYER has	been provided an EPA approved le	ed-based paint hazard information
190				LER'S Disclosure of Information and the presence of lead-based paint I	nazeros on seid property, (c) that
191				ed for lead-based paint hazards	
192				Walves does not waive this	
183				to cancel the contract aubject to the	
194 195	canceled under this clause, BU			ich must be accomplished before (aosing, (r) that it the contract is
104	many districtions of the six or not not response in the	· consumer manage	mapping will be received to be	e spetie	
167	11. SQUARE FOOTAGE VI	ERIFICATION: BUY	er is aware that any re	FERENCE TO THE SQUARE FOOTA	GE OF THE REAL PROPERTY OR
196	IMPROVEMENTS IS APPROXI	MATE. IF SQUARE FO	OTAGE IS MATERIAL TO TH	E BUYER, IT MUST BE VERIFIED D	URING THE INSPECTION PERIOD,
189 200	42 6ELLEDIO DEADERTY	Ridel Adume ent	588. Waxanii a kaamii ee ee	in a to sept think, which when it proper which	and the second s
201				hapter 25 Idaho Code SELLER shall other ecceptable form. BUYER has	
202	Disclosure Form" or other accept				were the man warming to the porty
203		· · · · · ·			
204	13. COVENANTS, CONDI	FIGNS AND REST	rictions (CG& R'S); e	UYER is responsible to obtain and	review a copy of the CC& R's (If
205 208	applicable). BUYER has review	ed CC& R'a. Tes	XI wo		
207	14 SUBDIVISION HOMEO	WNER'S ASSOCIA	TION: BLIVER is swore th	at memberahip in a Home Owner's	Accordation may be mayired and
205				nd regulations of the Association.	
209				n full in the Declaration of Covena	nts, Conditions and Restrictions.
210	BUYER has reviewed Homeowi	ner's Association Docu	ments: Yes No	N/A Association fees/dues are \$	
211 212	TRANSFER FEES of S		NA to pay Homeowner's As	sociation SET UP FEE of \$	and/or property
213	HYNTRE ER PER UI 9	AI	- mpg H (M)		
214	15. "NOT APPLICABLE DE	FINED:" The letters	"Na," "NA," "n.a" and "N.A.	" as used herein are abbreviations o	f the term "not applicable." Where
215	this agreement uses the term	"not applicable" or ar	n abbreviation thereof, it sh	all be evidence that the parties ha	ve contemplated certain facts or
216	conditions and have determined	that such facts or con-	dittons do not apply to the agr	eement or transaction herein.	
217	- CQ	こ つん	1/2		1 m. t.
218 219	BUYER'S Initials ()() Date _/_D		SELLER'S Initials ()() Date
220	Atuantis and Saming a mer anti- notation seek laneithi	O DY US IDENO ASSOCIATION OF P OF REALTORS & LISE BY AM	Y CTHER PERSON IS PROVISITED.	dasigned for and is provided only for use by rest Copyright ideho Association of REALTORSO, inc	scals promisionals who are members of the
221	re-21 residential, purchase and 6/	ale agreement page 8 of	B JULY BOYS EDITION		•

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	78 RG-21 RESIDENTIAL PURGHASE AND SALE AGREEMENT PAGE 2 of 8 JULY, 2009 EDITION
	74 PROPERTY ADDRESS: STEP hours Bounds the 30 100 45070207 B
	75 4. OTHER TERMS AND/OR CONDITIONS: This Agreement is made subject to the following special terms, considerations and/or contingencies which must be satisfied prior to closing.
į	Tracheded 1: all againable water trom Bernington & Montpolyer Tracketton & all abailable oil + mineral: 100 Shaw of montpolyer Budgette The Boshaw of Bernington times.
	12 Crops to Stay watth Leader 2007 -
8	A DUMAN DATE + home TO BE MANTED TO POLICE TO BOOK Appoint
B B	5. ITEMS INCLUDED & EXCLUDED IN THIS SALE; All existing fixtures and fittings that are attached to the property are INCLUDED IN THE PURCHASE PRICE (unless excluded below), and shall be transferred free of liens. These include, but are not limited to, all attached floor coverings, attached television
92 92 93	all window coverings, garage door opener(s) and transmitter(s), exterior trees, plants of shrubbery, water heating apparatus and fixtures, attached fireplace equipment, swnings, ventilating, cooling and heating systems, all ranges, ovens, built-in dishwashers, fuel tanks and trigetion fixtures and equipment, all water
94 94	and shall be included in the sale unless otherwise provided herein. BUYER should satisfy himselffnerself that the condition of the included items is acceptable. It is agreed that any item included in this section is of nominal value less than \$100.
98	Something All towns the in home That Seller wee Shee TO Leave
99 100	1 (A C A 1 (B) C
101 102	
104 105 106 107 108 109	6. TITLE CONVEYANCE: Title of SELLER is to be conveyed by warranty deed, unless otherwise provided, and is to be marketable and insurable except for rights reserved in federal patents, state or railroad deeds, building or use restrictions, building and zoning regulations and ordinances of any governmental unit, and rights of way and essements established or of record. Lians, encumbrances or defects to be discharged by SELLER may be paid out of purchase money at date of closing. No lians, encumbrances or defects which are to be discharged or assumed by SUYER or to which title is taken subject to, exist unless otherwise specified in this Agreement.
110	7. TITLE INSURANCE; There may be types of title insurance coverages available other than those listed below and parties to this agreement are advised to talk to a title company about any other coverages available that will give the BUYER additional coverage.
112 116 114 114 118 117 118	(A). PRELIMINARY TITLE COMMITMENT: Prior to closing the transaction, SELLER or BUYER shall furnish to BUYER a preliminary commitment of a title insurance policy showing the condition of the title to said premises. BUYER shall have business day(s) from receipt of the preliminary commitment or not fewer than twenty-four (24) hours prior to closing, within which to object in writing to the condition of the title as set forth in the preliminary commitment. If BUYER does not so object, BUYER shall be deemed to have accepted the conditions of the title. It is agreed that if the title of said premises is not marketable, or cannot be made so within business day(s) after notice containing a written statement of defect is delivered to SELLER, BUYER'S Earnest Money deposit will be returned to BUYER and SELLER shall pay for the cost of title insurance canositation fee, excrew and legal fees, if any.
119	(B). TITLE COMPANY: The parties agree that 1011 444 TITLE Company located at 11. (12 shall provide the title policy and preliminary report of commitment.
122 124 125 125 125 127 126 129	(C). STANDARD COVERAGE OWNER'S POLICY: SELLER shall within a reasonable time after closing furnish to BUYER a title insurance policy in the amount of the purchase price of the pramises showing marketable and insurable title subject to the list's, encumbrances and defects elsewhere set out in this Agreement to be discharged or assumed by BUYER unless otherwise provided herein. The risk assumed by the title company in the standard coverage policy is limited to matters of public record. BUYER shall receive a ILTA/ALTA Owner's Policy of Title insurance. A title company, at BUYER's request, can provide information about the availability, desirability, coverage and cost of various title insurance coverages and endorsements. If BUYER desires title coverage other than that required by this paragraph, BUYER shall instruct Closing Agency in writing and pay any increase in cost unless otherwise provided herein.
130 181 132 138	(D). EXTENDED COVERAGE LENDER'S POLICY (Mortgagee policy): The lender may require that SUYER (Borrower) furnish an Extended Coverage Lender's Policy. This extended coverage lender's policy considers matters of public record and additionally insures against certain matters not shown in the public record. This extended coverage lender's policy is solely for the benefit of the lender and only protects the lender.
134 135 136 137 138 139 140	8. MECHANIC'S LIENS - GENERAL CONTRACTOR DISCLOSURE STATEMENT NOTICE: BUYER and SELLER are hereby notified that, subject to Idaho Code \$45-525 et seq., a "General Contractor" must provide a Disclosure Statement to a homeowner that describes certain rights afforded to the homeowner (e.g. lien waivers, general liability insurance, extended policies of title insurance, surety bonds, and sub-contractor information). The Disclosure Statement must be given to a homeowner prior to the General Contractor entering into any contract in an amount exceeding \$2,000 with a homeowner for construction, siteration, repair, or other improvements to real property, or with a residential real property purchaser for the purchase and sale of newly constructed property. Such disclosure is the responsibility of the General Contractor and it is not the duty of your agent to obtain this information on your behalf. You are advised to consult with any General Contractor subject to Idaho Code \$45-525 et seq. regarding the General
142 143 144	Contractor Disclosure Statement. BUYER'S Initials ()() Date // 0 2 / 57 SELLER'S Initials ()() Date
146 149	This form is printed and distributed by the little Association of REALTORSS, less. This form has been designed for end is provided only for use by real exists professionals who are members of the

RE-21 RESIDENTIAL PURCHASE AND BALE AGREEMENT PAGE 2 of 8 JULY 2008 EDITION

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27	4 HE-21 REGIDENTIAL FURNMASE AND GALE ASSESSMENT PAGE BOY S. JULY BOOK EDITION	10th [3070207 B
. 27 27		100
27		
27	25. BUSINESS DAYS & HOURS A business day is herein defined as Monday through Friday, 8:00 A.M. to 5:00 where the subject real property is physically located. A business day shall not include any Saturday or Sunday, nor	shall a business day include
28 25 21: 26:	be performed shall be computed by excluding the date of execution and including the last day. The first day shall execution, if the last day is a legal holiday, then the time for performance shall be the next subsequent business day.	
284 284	26. SEVERABILITY: In the case that any one or more of the provisions contained in this Agreement, or any applications of the remaining provisions shall not in any thereby.	
287 286 289 280	27. ATTORNEY'S FEES; if either party initiates or defends any arbitration or legal action or proceedings which are in Agreement, the prevailing party shall be entitled to recover from the non-prevailing party reasonable costs and attorney's tess on appeal.	
291		Phononical Library and Provide Annual
292 298 294 295	damages or (2) pursuing any other lawful right and/or remedy to which SELLER may be entitled. If SELLER elects to pro- make demand upon the holder of the Earnest Money, upon which demand said holder shall pay from the Earnest	ceed under (1), SELLER shall Money the costs incurred by
295 297 296	appraisal, credit report fees, inspection fees and attorney's fees; and said holder shall pay any balance of the Earnest Mo one-half to SELLER'S Broker, provided that the amount to be paid to SELLER'S Broker shall not exceed the Broker's ag	ney, one-half to SELLER and reed to commission, SELLER
205 200 201	sole and exclusive remedy, and such shall not be considered a penalty or foresture. If SELLER elects to proceed under	(2), the holder of the Earnest transaction, including, without
302	the Earnest Money to be held pending resolution of the matter.	
303 304	If SELLER defaults, having approved said sale and fails to consummate the same as herein agreed, BUYER'S	
305 206	be returned to him/her and SELLER shall pay for the costs of title insurance, escrow fees, appraisals, credit report fees, in and attorney's fees, if any. This shall not be considered as a waiver by BUYER of any other lawful right or remedy to will be considered as a waiver by BUYER of any other lawful right or remedy to will be considered as a waiver by BUYER of any other lawful right or remedy to will be considered as a waiver by BUYER of any other lawful right or remedy to will be considered as a waiver by BUYER of any other lawful right or remedy to will be considered as a waiver by BUYER of any other lawful right or remedy to will be considered as a waiver by BUYER of any other lawful right or remedy to will be considered as a waiver by BUYER of any other lawful right or remedy to will be considered as a waiver by BUYER of any other lawful right or remedy to will be considered as a waiver by BUYER of any other lawful right or remedy to will be considered as a waiver by BUYER of any other lawful right or remedy to will be considered as a waiver by BUYER of any other lawful right or remedy to will be considered as a waiver by BUYER of any other lawful right or remedy to will be considered as a waiver by BUYER of any other lawful right or remedy to will be considered as a waiver by BUYER of any other lawful right or remedy to will be considered as a waiver by BUYER of any other lawful right or remedy and the considered as a waiver by BUYER of any other lawful right or remedy and the considered as a waiver by BUYER of any other lawful right or remedy and the considered as a waiver by BUYER of any other lawful right or remedy and the considered as a waiver by BUYER of any other lawful right or remedy and the considered as a waiver by BUYER of any other lawful right or remedy and right or remedy	high BUYER may be entitled.
807 808 809 810 811 312	29. EARNEST MONEY DISPUTE / INTERPLEADER: Notwithstanding any termination of this contract, BUYER and Stof any contraversy regarding the Earnest Money and things of value hald by Broker or closing agency, unless mutual writte the holder of the Earnest Money and things of value, Broker or closing agency shall not be required to take any action but at Broker's or closing agency's option and sole discretion, may interpleted all parties and deposit any monies or things of value interpleted and shall recover pour costs and reasonable atterney's fees.	n instructions are received by may await any proceeding, or
313 314 316	30. COUNTERPARTS: This Agreement may be executed in counterparts. Executing an agreement in counterparts at two identical copies of the same agreement. Each identical copy of an agreement signed in counterparts is deems identical copies shall together constitute one end the same instrument.	
316 319 319 320	31. REPRESENTATION CONFIRMATION: Check one (1) box in Section 1 and one (1) box in section 2 below to confit brokerage(s) involved had the following relationship(s) with the BUYER(S) and SELLER(S).	m that in this transaction, the
\$21	Section 1:	,
a22	A. The brokerage working with the BUYER(S) is acting as an AGENT for the BUYER(S).	**
252	☐ B. The brokerage working with the BUYER(S) is acting as a LIMITED DUAL AGENT for the BUYER(S), with	hout an AssigNED AGENT.
824 025	C. The brokerage working with the BUYER(S) is ecting as a LIMITED DUAL AGENT for the BUYER(S) and setting solely on behalf of the BUYER(S).	has an Assigned Agent
325 327 :	X D. The brokerage working with the BUYER(8) is acting as a NONAGENT for the BUYER(5). Section 2	•
328	X A The brokenage working with the SELLER(S) is acting as an AGENT for the SELLER(S).	
329	B. The brokerage working with the SELLER(S) is acting as a LIGHTED DUAL AGENT for the SELLER(S), with	hout en ASSIGNED AGENT,
230 331	C. The brokerage working with the SELLER(S) is acting as a LIMITED DUAL AGENT for the SELLER(S) and acting solely on behalf of the SELLER(S).	
332	D. The brokerage working with the SELLER(S) is eating as a NONAGENT for the SELLER(S).	
238 834 235 236 337	Each party signing this document confirms that he had received, read and understood the Agency Disclosure Brochure adopted or approved by the has conserted to the relationship confirmed above. In addition, each party confirms that the brokerage's agency office policy was made available PARTY UNDERSTANDS THAT HE IS A "CUSTOMER" AND IS NOT REPRESENTED BY A BROKERAGE UNLESS THERE IS A SIGNED WRITTING REPRESENTATION.	for Inspection and review. EACH
368 389	BUYER'S Initials () Date 7/02/17 SELLER'S Initials ()() Date
340 341 342	This form is printe and steamented by the ideate Association of REALTORSS, Inc. This form has been designed for and is provided only for use by real estate p National Association of REALTORSS. Like BY ANY OTHER PERSON IS PROHIBITED. Copyright Idean Association of REALTORSS, Inc. All rig RE-21 RESIDENTIAL PURGHASE AND SALE AGREEMENT PAGE 6 of 8 JULY, 2006 EDITION	visissionals who are members of the lits received,

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, 23	es F	RE-21 REDIDENTIAL PURCHASE AND S PROPERTY ADDRESS:	ALE AGHEE	MENT PAGE 4	9 E THA 30	DS EDITION				85071	207
22 22 22 22	es la 17 S 18 E	16. COSTS PAID BY: Costs aw or required by tender, or of BELLER agrees to pay up to \$ BUYER or SELLER has the opti	herwise si	tated hereli	n. The bold	v edada wo of len	ncurred by BUYER and SELLER unle vill be paid as indicated. Some costs uter required repair costs only, in excess of this amount.	aa otherwii are subjeo	se agreed h t to loan pi	nerein, or p ogram red	provided t julrement
			BUYER	SELLER	Shered Equally	NA		BUYER	SELLER	Shared Equely	N/A
		Appraisal Pess	Х				Title Ins. Standard Coverage Owner's Policy		Х		
		Appraisal Re-Inspection Fee				X	Title Ins. Extended Coverage Lender's Policy - Marigages Policy				χ
		Closing Escrow Fee			X		Additional Title Coverage				У
		Lender Document Preparation				X	Fuel in Tenk Amount to be Determined by Supplier				Х
		Tax Service Fee				X	Well Inspection				X
		Flood Gentification/Tracking Fac				X	Septis Inspections	·			¥
		Lender Required Inspections			***************************************	\ \	Septic Pumping				X
		Alterney Contract Preparation or Review Fee				<u>K</u>	ginvey		W. 14-7-7-14-40-5-14-14-15-15-14-14		1
]			***							
285 237 288 289 240 241 242 243 244	sub agn BU' 19. den 20.	estantially the same condition as use to accept the responsibility YER does not conduct a final RISK OF LOSS; Prior to naged by fire or other death CLOSING; On or before the uplete this transaction. Closing	s on society and expensive calculations of the	ptance date nse for mal 15th, BUYEI f this sale use prior t the, BUYER 18 Gate on	of this con king aure a R specifical Bull risk of Closing, and SELL which all of	ntract SE(iii the utiliti ally release of loss sh this agre .ER shall of document	JYER and SELLER have been compl LER shall make premises available to see are turned on for the walk through es the SELLER and Broker(a) of any sall remain with SELLER. In addition seemant shall be void at the option deposit with the closing agency all fun is are either recorded or accepted to	or the final except for liability. on, should of the BU ds and insi	welk throughone and I the pren YER. bruments n	gh and cable, if nises be n	
245 246 247	The	ceads are available to SELLE parties agree that the CLOSIN ted at	ig agenc	y for this t	be no later ransaction	then (Date shall be _	Northern TiTh	j			
248 248		long-term escrow / collection (s			ng-term es	crow halde	er shall be				***************************************
250 251 252	21. Prop	POSSESSION: BUYER sha perty taxes and water assessm umed and utilities shall be pro-r	Il be entitle sents (usin sted as of	ed to posse of the last of	ession (f) i ivaliable e SAC	upon closir ssessmen	ng ordate it as a basis), rents, interest and rese	_time rves, liens	, encumbra	A.i	M. □P.M bligations
253 254 255 256 267 258	22. sale men	SALES PRICE INFORMA' data from this transaction, inc neers, its members' prospects	TION: SE luding sel , appreise	LLER and ling price a re and oth	BUYER h	iereby gra ly addresa lonal usor	int permission to the brokers and eit to the local Association / Board of F s of real estate eater data. The part ided to the County Assessor Office b	REALTORS	场, multipk Agreemen	a listing se It acknowle	rvice, Its edge that
259 250 261 252	or el façsi	actronic transmission shall be mile and electronic transmitted	the sam signature	e as delive s by signing	ary of an o g an origina	nginal. Al al docume		Closing Ag	ency, the		
268 254 265 265 266		ER'S Initials ((1))()(9 7/0°	1 '		GELLER'S Initials () dualigned for end is provided only for use by real of ANY OTHER PERSON IS PROVISITED.) Date	members of it	ie
267 268 299 270		residential purchase and sale.		Oppyright i	daho Ausocial	Han of REALT	ANY OTHER PERSON IS PROMISSITAL. DRBS. Inc. All rights reserved.				
271		•									

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	REALIGES						(1, 2,	anner p	
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DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BEAR LAKE

```
STEVEN CUMMINGS, an individual)

residing in Montana, )

Plaintiff, )

vs. ) Case No.

ROGER L. STEPHENS, an ) CV-09-183

individual residing in )

Providence, Utah, JOHN )

DOES I-X, )

Defendants. )
```

ORAL DEPOSITION OF STEVEN B. CUMMINGS

Taken on September 27, 2010

REPORTED BY:

PAUL D. BUCHANAN, RPR, RMR, CSR No. 7, and Notary Public

(208)345-9611

M & M COURT REPORTING

you were looking at that contain the legal descriptions that you examined to arrive at your conclusion in your affidavit that it included land east of the highway. I am just trying to find out what documents were you looking at.

I just want to be clear. Α.

(Pause in proceedings.)

(Discussion off the record.)

(Deposition Exhibit Nos. 19 and 20

marked for identification.)

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MR. BUDGE: Back on the record.

Mr. Cummings, while we were off the record you went through Deposition Exhibit No. 17, which is the package of documents produced that you previously in your deposition indicated was a complete copy of your file, and you pulled out some documents that we have now marked as Deposition Exhibit Nos. 19 and 20. Do you have those in front of you?

A. Yes.

And looking first to Exhibit No. 19, the first page is a fax cover sheet from Exit Realty that has the date of 7/26/07 and also reflects a fax time of 12:19 p.m., and that includes a copy of the real estate purchase and sale agreement between the Stephens and Three Bar Ranches but does not contain a

M & M COURT REPORTING

1439

legal description; correct?

A. That's correct.

- Q. And if I understand your explanation, after receiving that you then called back to Exit Realty a second time, talked to Mr. Evan Skinner and said what you sent me didn't include the legal description, refax it?
- A. It wasn't the second time, I called back again, yes, and again requested him to send me a copy of the legal description. If you notice on there, it referred to Addendum 1, it was the Stephens Ranch and it was Addendum 1. I wanted to see Addendum 1.
- Q. So then you received back a second fax from Exit Realty that we have identified as Deposition Exhibit No. 20; correct?

A. That's correct.

Q. And it reflects the same fax date on the top left corner of 7/26 of '07 and the time of 2:59 p.m.; correct?

A. That's correct.

Q. And that same date and fax time appears on the top left corner of all of the pages in Exhibit No. 20, which consists of the fax cover sheet, the real estate purchase and sale agreement, and also the commitment for title insurance.

(208)345-9611

M & M COURT REPORTING

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A. Yes. Do you mind if I put this in order?

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MR. BUDGE: Let's go off the record.

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(Discussion off the record.)

Λ

MR. BUDGE: Back on the record.

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2. So in Exhibit No. 20 the legal description

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attached as Exhibit A to the real estate purchase and

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sale agreement is the same legal description that's

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attached to the commitment for title insurance?

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A. The description is the same.

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Q. So now let's go back to where we were before

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we had the confusion over the documents. In your

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affidavit you state that you examined both the legal description contained within the buy/sell agreement

13 14

and the description contained within the title

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commitment that had been ordered with regard to the

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buy/sell agreement. So when you made that statement

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in your affidavit, you are referring to these

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descriptions that we just discussed in Exhibit No. 20?

Then your next statement in your affidavit

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A. Yes.

20

21 you state, The legal description describes property

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located on both sides of Highway 30 near Montpelier.

23

Did you make that determination at the time you were

24

doing your due diligence back on July 26, 2007, or

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were you referring in your affidavit to a later period

(208)345-9611 NT 2nd moth

M & M COURT REPORTING

Brad H. Bearnson (I.S.B. 7086) Aaron K. Bergman (I.S.B. 8878) BEARNSON & CALDWELL, LLC 399 North Main, Suite 270 Logan, Utah 84321 Telephone: (435) 752-6300

Facsimile: (435) 752-6301 Email: <u>bbearnson@bearnsonlaw.com</u> Email: <u>abergman@bearnsonlaw.com</u> Attorneys for Defendant Northern Title

NT 2nd moth

Case No. CV-09-183

AFFIDAVIT OF AARON K. BERGMAN - Page 1

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BEAR LAKE

STEVEN CUMMINGS, an individual residing in Montana,) Case No. CV-2009-183
Plaintiff,)
VS.) AFFIDAVIT OF AARON K. BERGMAN
ROGER L. STEPHENS, an individual residing in Providence, Utah, NORTHERN TITLE COMPANY OF IDAHO, INC., an Idaho Corporation, JOHN DOES I-X.)))) Case No. CV-09-183
Defendants.) (aso 146. e v 65 165) () ()
ROGER L. STEPHENS, an Idaho corporation,)))
Third Party Plaintiff, vs.)))
DOROTHY JULIAN, an individual residing in Eagle, Idaho, EVAN SKINNER, an individual residing in	
Montpelier, Idaho, RYAN OLSEN, an individual residing in Georgetown, Idaho, EXIT REALTY OF BEAR LAKE, LLC an Idaho Limited Liability Company, JOHN DOES 1-X.	
Third Party Defendants.	

STATE OF UTAH) : ss. COUNTY OF CACHE)

AARON K. BERGMAN, being first duly sworn on oath, deposes and says:

- 1. I am an attorney licensed to practice law in the State of Idaho. I represent Defendant Northern Title Company of Idaho, Inc. ("Northern Title") and have personal knowledge of the matters testified to herein and would so testify if called.
- 2. As the parties and Court are likely aware, clean copies of each document were provided in support to Northern Title's Second Motion in Limine. Where Plaintiff has alleged documents not previously produced were recently raised in Defendant Northern Title's Second Motion in Limine, I will lay out below the source of each exhibit.
- 3. Exhibit "A" is a true and correct copy of the Affidavit of Roger Stephens, dated September 18, 2012. A copy of such was also produced at Roger Stephens deposition as Exhibit 69, for which I was personally present.
- 4. Exhibit "B" is a true and correct copy of the Exclusive Seller Representation

 Agreement, a copy of which was produced at the deposition of Steven Cummings as Exhibit "1."
- 5. Exhibit "C" is a true and correct copy of a publicly available printout from the State of Idaho, which was obtained online shortly before submitting Northern Title's Memorandum to the Court, which shows that per Idaho's public records, Ryan Olsen was the broker of Exit Realty of Bear Lake, LLC, at the time in question.
- 6. Exhibit "D" is a true and correct copy of the Affidavit of Dorothy Julian, a copy of which was submitted as Exhibit "22" in the deposition of Dorothy Julian.

AFFIDAVIT OF AARON K. BERGMAN - Page 2
Case No. CV-09-183

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- 7. Exhibit "E" is a true and correct copy of the affidavit of Evan Skinner, a copy of which was produced as Exhibit "24" in the deposition of Dorothy Julian.
- 8. Exhibit "F" are Northern Title order documents, a portion of which, pages 1, 4, 5, 6, 7 and 10 were produced to Plaintiff in response to Plaintiff's discovery requests, bates-stamped NOR0329-NOR0334. These documents were produced to my office by Northern Title. On discovering that the document pages were incomplete (by investigating the fax-headers at the top of each page), Northern Title found the remainder of the missing pages, pages 2,3,8 and 9. On finding the missing pages, the complete document was immediately supplemented to Plaintiff on June 21, 2012.
- 9. Exhibit "G" is a true and correct copy of the affidavit of Lori Thornock, a copy of which was submitted as Exhibit "23" to the deposition of Dorothy Julian.
- 10. Exhibit "H" is a true and correct copy of the Second Affidavit of Lori Thornock, presented as Exhibit "L" to Northern Title's response to Plaintiff's Motion for Summary Judgment, filed with the Court on May 29, 2012.
- 11. Exhibit "I" is a true and correct copy of the first title commitment, a copy of which was submitted as part of Exhibit "22" to the deposition of Dorothy Julian, and supported by her affidavit therein.
- 12. Exhibit "J" is a true and correct copy of the second title commitment, a copy of which was submitted as part of Exhibit "22" to the deposition of Dorothy Julian, and supported by her affidavit therein.
- 13. Exhibit "K" is a true and correct copy of the Real Estate Purchase and Sale

 Agreement, a copy of which was also submitted as Exhibits "50" through "52" in Phillip Baum's deposition.

AFFIDAVIT OF AARON K. BERGMAN - Page 3 Case No. CV-09-183

- 14. Exhibit "L" is a true and correct copy of Steven Cummings' affidavit, a copy of which was also submitted as Exhibit 18 to Steven Cummings' deposition.
- 15. Exhibit "M" is a true and correct copy of portions of the deposition of Steven Cummings.
- 16. Exhibit "N" is a true and correct copy of the affidavit of Lori Thornock, a copy of which was also submitted as Exhibit "41" to her deposition.
- 17. Exhibit "O" is a true and correct copy of the Escrow General Provisions, a copy of which was also provided in response to Plaintiff's discovery responses, but bates-stamped NOR0366-NOR0366.
- 18. Exhibit "P" is a true and correct copy of the Original Warranty Deed, a copy of which was also submitted as Exhibit "57" to Phillip Baum's deposition.
- 19. Exhibit "Q" is a true and correct copy of portions of Roger Stephen's deposition, for which I was personally present.
- 20. Exhibit "R" is a true and correct copy of the Corrected Warranty Deed, a copy of which was also submitted as Exhibit "58" to Phillip Baum's deposition.
- 21. Exhibit "S" is a true and correct copy of the Owner's Policy of Title Insurance issued to Cummings, a copy of which was also produced in response to Plaintiff's discovery requests, but bates-stamped NOR0355-NOR0366.
- 22. Exhibit "T" is a true and correct copy of the Affidavit of Steven Cummings, produced by Plaintiff to Northern Title on or about May 2, 2012.
- 23. Exhibit "U" is a true and correct copy of a draft of Lenore Katri's deposition received by the court reporter, which was utilized wherein the final deposition transcript was not

AFFIDAVIT OF AARON K. BERGMAN - Page 4 Case No. CV-09-183 yet available. To the best of my knowledge, the draft and final deposition transcript do not materially differ.

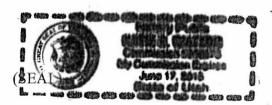
Exhibit "V" are documents obtained from Northern Title in support of Northern 24. Title's Second Motion in Limine, and specifically are those documents that evidence Northern Title was a properly certified and licensed as a Title Insurance office. To the best of my knowledge, these documents were obtained from the State of Idaho Department of Insurance, and on Northern Title's obtaining these documents, they were immediately filed with Northern Title's Second Motion in Limine.

FURTHER AFFIANT SAYETH NOT.

Dated this day of July, 2012.

AARON K. BERGMAN

SUBSCRIBED AND SWORN TO before me this 13 day of July, 2012.



Residing at: LOCICIVI (
My Commission Expires:

AFFIDAVIT OF AARON K. BERGMAN - Page 5

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